

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v2  
Regular Meeting  
February 5, 2020

### **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:32 PM.

### **FLAG SALUTE**

**OPEN PUBLIC MEETINGS 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, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 9, 2020 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, Eorio, Genirs, Humbert, Kraus, Pochtar, Tancredi, Zaidel  
Members Absent: Juwana  
Also Present: Board Attorney, Amanda Wolfe, Esq.; Township Planner, David Schley, PP, AICP;  
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Ms. Genirs, seconded by Mr. Tancredi, all in favor and carried, the absence of Mr. Juwana was excused.

### **APPROVAL OF MINUTES**

**January 8, 2020 – Regular and Reorganization Sessions** - On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted.

### **APPROVAL OF RESOLUTION**

**Buono, Brian; #ZB19-016**; Block 4801, Lot 3; 117 Whitenack Road; Bulk Variances - Mr. Zaidel moved approval of the resolution as drafted. Ms. Genirs seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel  
Nay: NONE

Motion carried.

### **APPROVAL OF RESOLUTION**

**Majewski, Matthew & Judith; #ZB19-021**; Block 11102, Lot 19, 195 Mountain Road; Bulk Variance - Ms. Genirs moved approval of the resolution as drafted. Ms. Pochtar seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel  
Nay: NONE

Motion carried.

**EXTENSION OF TIME FOR PLANS TO BE SIGNED**

**J. Nan Realty Co., LLC**; Block 3603, Lot 1; 18 Columbia Road; Preliminary/Final Site Plan; #ZB18-011

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

Frederick B. Zellej, Esq., attorney with the firm of *Bisogno, Loeffler & Zellej LLC*, Basking Ridge, NJ, entered his appearance on behalf of the applicant. He advised the board that all documents had been submitted and that the plans were ready to be signed. Mr. Schley concurred.

**APPROVAL OF RESOLUTION**

**J. Nan Realty Co., LLC; #ZB18-011**; Block 3603, Lot 1; 18 Columbia Road; Preliminary/Final Site Plan; Variances, Exceptions; Extension of Time – Ms. Genirs moved approval of the resolution as revised (extension of variance approval to *March 1, 2020*). Ms. Pochtar seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel  
Nay: NONE

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

**Aptekar, Matthew**; Block 11004, Lot 10; 21 Sentry Court; Bulk Variance; #ZB19-024

Present: Frederick B. Zellej, Esq., Attorney for the Applicant  
Matthew Aptekar, Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the board had jurisdiction to hear this application. Mr. Aptekar and the board's professionals were duly sworn.

Frederick B. Zellej, Esq., attorney with the firm of *Bisogno, Loeffler & Zellej LLC*, Basking Ridge, NJ, entered his appearance on behalf of the applicant. He advised the board that the application required relief for minimum rear yard setback in order to construct a patio and two (2) new decks at the rear of the existing dwelling. The larger of the two (2) decks exceeds the maximum square footage permitted in order to meet the exemption criteria which would allow it to extend into the minimum required rear yard. He noted that the subject property was pie-shaped and that it would be difficult to construct a deck with convenient access to the existing dwelling in a conforming location.

Matthew Aptekar, applicant residing at 21 Sentry Court, testified that from the proposed deck, he would see his neighbor's driveway (Lot 11). He added that there was significant vegetative buffering between his property and the neighbor on the opposite side (Lot 8).

Mr. Zellej advised that although the subject property is on the Bridgewater side of the municipal boundary, Bernards Township has sole supervision of the land and buildings pursuant to an agreement with Bridgewater Township.

Mr. Aptekar stipulated, as conditions of approval, to all the comments made in both Mr. Schley's memo dated 01/23/2020 and Mr. Quinn's memo dated 02/03/2020. There were no comments from the Environmental Commission. He added that he had taken the photos and that they accurately depict the property as it currently exists.

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

After deliberating, the board felt that the applicant 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 variance relief requested subject to the conditions stipulated to by the applicant and as stated during deliberations. Mr. Kraus seconded.

Roll Call: Aye: Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel  
Nay: NONE

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

**Family Realty & Mortgage Co., Inc.**; Block 2801, Lot 30; 288 South Finley Avenue; Bulk Variances; #ZB19-022

Present: Frederick B. Zelle, Esq., Attorney for the Applicant  
Rudolph L. Holzmann, PE, Engineer for the Applicant  
Jonathan E. Booth, RA, Architect for the Applicant  
Michael Quick, Representative for the Applicant  
Peter Quick, Representative for the Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the board had jurisdiction to hear this application. The representatives and professionals for the applicant corporation and the board's professionals were duly sworn.

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the applicant corporation. He stated that the applicant seeks relief for minimum side yard setback and for combined side yards setback in order to construct a one-story basement-level single-car garage addition to an existing undersized garage bay on the south side of the dwelling which is currently under renovation. He added that the bulk of the addition would be below grade and that the closest neighbor on that side (Lot 29) would see the side of the house, as she currently does. The roof of the addition will be flat to accommodate a deck which will wrap around the front of the house and connect to the front porch. Finally, Mr. Zelle opined that most prospective buyers in that neighborhood want a two-car garage and no practical conforming location for such exists.

Michael Quick, Managing Member for the applicant corporation with an address of Charles Road, Bernardsville, NJ, testified that the projected completion date for the renovation including the addition, is sometime during the spring of 2020 and that it not only improves the subject property, but also enhances the surrounding neighborhood. He noted that although there is a significant vegetative buffer between the south side of the property where the addition is proposed and the adjacent lot (Lot 29), the applicant is willing to supplement that buffer.

Peter Quick, member of the applicant corporation, testified that the deck on the top/roof of the addition would be visible from the street. Noting that other areas on the property were considered for the garage addition, he stated that because of the existing topography, the proposed location is the best alternative. Finally, he stated that he was unaware of any negative comments from neighbors.

Rudolph L. Holzmann, PE, engineer with the firm of *Yannaccone, Villa and Aldrich LLC*, Chester, NJ, was accepted by the board as an expert in the field of engineering. Testifying that he had prepared the engineering plans for the project, Mr. Holzmann stated that a side-loading garage had been considered however there would not be enough room between the garage and the side property line for a car to turn around. Mr. Quinn concurred. Mr. Holzmann opined that locating the new garage bay, which is front-loading, adjacent to the existing garage bay, which is also front-loading, would minimize the impact.

Noting that the township had reviewed the stormwater management measures planned for the site during the construction permit application process for the renovation, Mr. Holzmann stated that because of the topography, any overflow from the proposed drywell would run to the front yard. Mr. P. Quick agreed to connect that overflow directly into the catch basin located along the property frontage and stated that since there is an existing underground pipe from the roof leaders to the catch basin, there would be no further ground disturbance. Mr. Holzmann agreed to redesign the drywell with a bottom discharge pipe in addition to the top overflow pipe.

As conditions of approval, Mr. Holzmann stipulated to all comments under his purview made in Mr. Schley's and Mr. Quinn's memos.

Hearing no further questions from the board for Mr. Holzmann, Chairman Breslin opened the hearing to the public for questions. Hearing none, that portion of the hearing was closed.

Jonathan E. Booth, RA, architect with a business address of 33 Bullion Road, Basking Ridge, NJ, was accepted by the board as an expert in the field of architecture.

**Exhibits A-1, A-2 and A-3**, sheets 1, 4 and 5 of 5 respectively, colorized versions of architectural plans for the gar-

age addition dated 11/06/2019 and prepared by Mr. Booth, were entered into evidence. Mr. Booth testified that because of the topography of the property, the distance from grade level to the deck surface would decrease to approximately 2 feet at the back corner of the garage addition and opined that this is the most compact, least disruptive location. A swale running parallel to the addition would be created to direct water away from the adjacent property to the south (Lot 29). Finally, he stated that any lighting would be downfacing or recessed into the overhang above the deck.

Hearing no further questions from the board for Mr. Booth, Chairman Breslin opened the hearing to the public for questions. Hearing none, that portion of the hearing was closed.

Mr. Zellely stated that he had no further witnesses and the hearing was then opened to the public for comments.

Thomas B. Marquet, 296 South Finley Avenue, was duly sworn by Ms. Wolfe and stated that his concern about the project was that it be completed in a timely manner.

Todd Edelstein, 172 Riverside Drive, was duly sworn by Ms. Wolfe and spoke in favor of the application.

Hearing no further comments, that portion of the hearing was closed.

Mr. Zellely presented his closing arguments.

After deliberating, the board felt that the applicant had satisfied the positive and negative criteria required for "c(2)" or "benefits outweigh detriments" variance relief. 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 variance relief requested subject to the conditions stipulated to by the applicant and as stated during deliberations. Ms. Genirs seconded.

Roll Call:	Aye:	Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
	Nay:	NONE

Motion carried.

\* \* \* *The Open Session was recessed at 8:53 PM and reconvened at 9:05 PM.* \* \* \*

#### **COMPLETENESS AND PUBLIC HEARING**

**Hardy, Edmond J. & Suzanne L.**; Block 7301, Lot 33; 242 Liberty Corner Road; d-1 Use Variance, Bulk Variance; #ZB19-023

Present:	Frederick B. Zellely, Esq., Attorney for the Applicants
	Robert Roselli, PE, Engineer for the Applicants
	Edmond J. Hardy, Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the board had jurisdiction to hear this application. Mr. Hardy, Mr. Roselli and the board's professionals were duly sworn.

**Exhibit A-1**, hard copies of the resolution for Matthew & Shilpa Clott, ZB15-006, and **Exhibit A-2**, a rendering of the proposed pool, were handed out to the board and entered into evidence.

Frederick B. Zellely, Esq., attorney with the firm of *Bisogno, Loeffler & Zellely LLC*, Basking Ridge, NJ, entered his appearance on behalf of the applicants. He stated that the applicants propose to construct an in-ground pool requiring "c" variance relief for a pool not located behind the rear building line of an adjacent dwelling. He noted that because the location of the subject property is similar to that of properties on a cul-de-sac, there is no possible conforming location for a pool. In addition, a "d-1" use variance is required since pools over 1,000 square feet such as the one proposed, are considered a non-permitted accessory use under the township's ordinance.

Mr. Zellely asked the board to read **Exhibit A-1** and suggested that testimony contained in the resolution shed light on the genesis of the ordinance limiting pool size which was to prohibit a resident from utilizing their pool as a pool club. He stated that the proposed pool was intended solely for the personal use of the applicants and their family

and opined that the pool's size was in proportion to the size of the existing dwelling.

Edmond J. Hardy, residing at 242 Liberty Corner Road, stipulated, as conditions of approval, to all comments made in Mr. Schley's memo dated 01/23/2020 and in Mr. Quinn's memo dated 02/03/2020 and emphasized that the pool would be for his family's personal use only. Finally, he stipulated that there would be no above-ground lighting. Mr. Zelley added that the surface area of the pool would cover just over 2% of the back yard where 25% is permitted.

Hearing no further questions from the board for Mr. Hardy, Chairman Breslin opened the hearing to the public for questions. Hearing none, that portion of the hearing was closed.

Robert Roselli, PE, engineer with a business address of 213 Route 100, Katonah, NY, was accepted by the board as an expert in the field of engineering. **Exhibit A-3**, a colorized version of sheet 1 of 1 of pool plans dated 11/27/2019 and prepared by Mr. Roselli, was entered into evidence. He testified that none of the work associated with this project impinges on the existing conservation easement and that the applicant would obtain all permits required by the New Jersey Department of Environmental Protection prior to commencing the project. Adding that the drainage had been designed to comply with the township's stormwater management regulations, he saw no potential adverse effects to the surrounding neighborhood. Mr. Roselli opined that the existing natural vegetation along the perimeter of the property would provide sufficient buffering and that nothing additional would be required. He stipulated, as conditions of approval, to complying with the township's tree replacement ordinance and to all comments under his purview in both of the board professionals' memos.

Hearing no further questions, the hearing was opened to the public for questions or comments. Hearing none, that portion was closed.

Mr. Zelley provided a brief summary.

After deliberating, the board felt that the applicants had satisfied the positive and negative criteria required for the relief requested. Mr. Tancredi moved to deem the application complete and to direct the board attorney to draft a resolution memorializing the board's decision to grant approval subject to the conditions stipulated to by the applicants and as stated during deliberations. Ms. Genirs seconded.

Roll Call:	Aye:	Breslin, Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
	Nay:	NONE

Motion carried.

**COMMENTS FROM MEMBERS OR STAFF** – Chairman Breslin cancelled the February 13, 2020 meeting.

### **ADJOURN**

On motion by Mr. Kraus, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 9:50 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*03-04-2020 Approved as drafted*

02/12/2020 dssw