

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v2
Special Meeting
June 17, 2021

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 7, 2021 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: Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: Agarwal
Also Present: Board Attorney, Amanda C. Wolfe, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Mr. Kraus, seconded by Mr. Tancredi, all in favor and carried, the absence of Mr. Agarwal was excused.

Ms. Baumann recused herself and left the room.

COMPLETENESS AND PUBLIC HEARING

Naulty, David & Carrie; Block 6303, Lot 16; 1 Pin Oak Court; Bulk Variances; ZB21-012

Present: Carrie Naulty, Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. She added that this hearing was initially noticed for May 5, 2021 but notice was not served to the required utilities which has since been rectified. Ms. Naulty, Mr. Quinn and Mr. Schley were duly sworn.

Carrie Naulty, Applicant residing at 1 Pin Oak Court, testified that the proposed project, installation of an in-ground pool and adjoining walkway/patio, requires relief for the location of the pool which must be behind the rear building line of adjacent dwellings. Noting that the subject property is a corner lot containing front yards on Pin Oak Court (primary) and Hunters Lane (secondary), Ms. Naulty additionally sought relief for an existing 54" fence, a portion of which is in the Hunters Lane front yard where a maximum of 48" is permitted. Addressing a comment in the Environmental Commission's memo (04/28/2021) which noted that this project would bring the total lot coverage close to the maximum allowable, she confirmed that a nonconforming shed located in the Hunters Lane front yard is to be removed.

Ms. Naulty stated that she and her husband had taken the pictures that were submitted with the application in January or February and that they accurately depict the property as it currently exists.

Noting that there is a small area to the rear of the subject property that would be a conforming location, Mrs. Naulty stated that it was not large enough for a pool and she confirmed that additional landscaping would be installed to

buffer the pool from Hunters Lane. **Exhibit A-1**, a photo previously submitted with the application, was entered into evidence and showed a tree in the vicinity of the proposed pool location that will be removed. Finally, she stipulated to the comments made in the memos from both Mr. Schley (06/10/2021) and Mr. Quinn (05/03/2021).

Ms. Naulty testified that she had spoken to her neighbors and had not heard any negative comments about either the proposed pool or the existing fence.

The hearing was opened to the public for questions or comments. Hearing none, the hearing was closed.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for both "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variances. 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 the application for variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Pochtar seconded.

Roll call:	Aye:	Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

Ms. Baumann returned to the dais.

COMPLETENESS AND PUBLIC HEARING

Baston 95 LLC; Block 704, Lot 1.01; 95 Morristown Road; Preliminary/Final Site Plan; Use Variance; Bulk Variances; ZB21-015

Present:	Frederick B. Zelle, Esq., Attorney for the Applicant
	Jeffrey C. Martinson, RA, Architect for the Applicant
	Catherine Mueller, PE, CME, Engineer for the Applicant
	Afrim Berisha, Applicant

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant. He stated that the Applicant sought Preliminary and Final Site Plan approval along with a use variance, bulk variances and exceptions to raze an existing three-story restaurant/building formerly known as the Vine and replace it with a larger two-story restaurant/building to be called Gusto. He noted that the new building would be set back farther from Morristown Road which would reduce an existing front yard setback nonconformity. The seating capacity would remain the same but the parking would increase from 83 stalls to 85. Mr. Zelle stated that restaurants are not permitted in this zone (R-6 Residential Zone) however, a restaurant had operated as a pre-existing nonconforming use on this property for many years and the Applicant's Planner would address whether the proposal required a "d(1)" use variance or a "d(2)" expansion of a nonconforming use variance. He stated that in order to provide more work area space and more distance between tables, the new building would be increased by approximately 1,200 sq. ft.

Ms. Wolfe stated that notice was timely and sufficient therefore the Board had jurisdiction to hear this application. Mr. Martinson, Ms. Mueller, Mr. Berisha, Mr. Quinn and Mr. Schley were duly sworn.

Afrim Berisha, Applicant residing at 20 Gold Boulevard, Basking Ridge, NJ, stated that he had owned restaurants for over 30 years and owned the restaurant on the subject property, the Vine, for many years. He sold the Vine and recently repurchased it with two (2) partners. He confirmed that the pictures submitted with the application were taken by Ms. Mueller and that they accurately depict the property as it currently exists.

Mr. Berisha testified that the existing restaurant which served Italian style food, has four (4) levels (a cellar and 3 floors) and has a seating capacity of 165 inside and 50 outside with 83 parking stalls. It is not ADA compliant, nor does it have sprinklers. Noting that the proposed restaurant will have the same number of seats and a total of 85 parking stalls, he stated that parking capacity had never been an issue in the past except during the holidays when corporations held large parties but he added that those types of parties are rarely, if ever, held anymore. There were never any accidents or police involvement over traffic issues.

Mr. Berisha averred that the proposed restaurant would be state-of-the-art, serve Mexican food California style and have three (3) levels (cellar and 2 floors) with 15 to 18 employees. The cellar will have a prep area, kitchen (for parties), storage, refrigeration/freezer units and a small office. The first floor, which is the only floor that will be ADA compliant, will feature a semi-open kitchen for a la cart service, a bar and a spacious seating area. The second floor will have two (2) private party areas and a high-end tequila bar with an open-air terrace. He emphasized that the terrace will be used for dining (seasonal) with table-service only and not as a nightclub or sports bar where patrons stand around. He confirmed that there would be no live bands or outdoor entertainment. There will be no elevator and there will be a patio in the front, as there currently is. The new building will be pushed back on the property, which would provide a safer, quieter option for those dining on the patio and he stipulated to using umbrellas without advertising as had been stipulated to in a previous application (#ZB16-032 for the patio).

Mr. Berisha stated that there is no need for a loading dock since all supplies will be delivered by hand truck from the supply vehicles to the cellar as has been done in the past without issue. Generally speaking, deliveries are made before lunch or in the afternoons in between lunch and dinner however, the majority of the deliveries are made mid-morning. No deliveries are made early in the morning since no one is present at that time to accept them. Delivery trucks are either vans or box trucks with 30' trucks reserved for liquor deliveries.

Mr. Berisha affirmed that he had spoken with the neighbors and that the main concern is the potential noise level generated from the terrace located in the back of the building and facing a commercial building. He stated that additional landscaping will be provided along with a solid six-foot high fence along the rear property line to shield the residences on adjoining Lots 9 and 10 from the car headlights. Lighting for the parking areas will be downward directed LED's to mitigate any light spillage and wall sconces will be used on the patio and terrace.

In response to questions from the Board, Mr. Berisha testified that there could be take-out on a minimal level; the cellar will not have any areas for eating; there will be self-seating only in the two (2) bar areas; and hours of operation will be 11:30 AM to 11:00 PM Monday through Friday with later closing hours on the weekends. In reference to the possibility of valet parking, he stated that he was unsure about offering the service and that he will explore potential offsite parking especially at the office building next door. If that opportunity is to be realized, valet parking would become a viable possibility. He added that the restaurant could host two (2) small parties simultaneously along with the a la cart dining. Mr. Berisha stated that there would be outside speakers (violation of a condition of approval for Application #ZB16-032) for soft background music. Finally, he noted that recycling pickups are done between 6:00 AM and 7:00 AM.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions.

Jean Marie Dour, residing at 28 Franklin Drive, questioned the total capacity for the building and whether the parking lot configuration would change. Mr. Berisha responded that the seating capacity would remain the same as would the parking area with the exception of wider aisles.

Stacey Molinari, residing at 27 Franklin Drive, asked about the "open ceiling" concept for the terrace. Mr. Berisha responded that that concept had been abandoned. In reference to the building height, he stated that only two areas of the roof would be 35' high whereas the entire rear area of the existing building's roof is at 35'. Mr. Zelley stated that a traffic engineer would testify at a later date to address parking and circulation concerns voiced. Finally, Mr. Berisha agreed to review the refuse and recycling removal plan to try to mitigate noise concerns.

In response to questions from Terrence Breidigan, 69 Morristown Road, Mr. Berisha stated that the trash area would remain in the same location however, it will be fenced in and landscaped to improve the look. He also stated that there would be no outside gatherings after closing.

Margaret (Meg) Dolan, 15 Parkview Avenue, noted that although she lives a distance from the restaurant, she can hear the lids crashing when the employees deposit trash/recycling in the dumpsters. Mr. Berisha agreed to generate a plan to mitigate the noise issue. She asked if there is a plan to limit dumpster use especially at night after closing.

Questions from Lisa Wagner, 32 Franklin Drive (adjacent Lot 9); Tom Lambert, 123 Fieldstone Drive; Keith Molinari, 27 Franklin Drive; and Alice Moro, 31 Franklin Drive (adjacent Lot 10) were deferred to the Applicant's other profes-

sionals for responses. Mr. Berisha agreed to submit renderings of the proposed building from various vantage points prior to the next hearing and stipulated to conducting noise level test at the property lines.

Hearing no further questions from the public, that portion of the hearing was closed.

* * * *The Open Session was recessed at 9:41 PM and reconvened at 9:49 PM.* * * *

Jeffrey C. Martinson, RA, architect with the firm *The Martinson Group LLC*, Easton, PA, was accepted by the Board as an expert in the field of architecture and testified that he had inspected the site during the fall when the restaurant was closed. He stated that there are clear ingress/egress points however most of the parking is on the side opposite to the building entrance which is awkward and inconvenient. He opined that circulation in the parking areas is somewhat confusing and, although acknowledging that he had not visited the site at night, he asserted that the existing shoebox style of lighting is outdated, inefficient and unattractive. Finally, he stated that he could not see the neighboring residences because of the existing foliage.

Mr. Martinson asserted that although renovation would be easier and cheaper, he recommended replacement of the existing building for the following reasons:

- Disjointed room relationships
- Not fully sprinklered
- Not construction code compliant
- Multiple safety and fire hazards
- Antiquated mechanical systems
- No clear point of arrival
- Not structurally sound (did not perform a formal analysis)

Noting that he had worked with Mr. Berisha's partners in the past on other restaurant projects, Mr. Martinson testified that, in designing this building he looked at how it could fit on the site while maintaining the existing ingress/egress pattern, the amount of parking and existing amount of impervious coverage. By shifting the building back approximately 18' from the right-of-way, sight lines would be improved. He also sought to create a clear area for deliveries in the rear which will allow trucks to enter the site properly as opposed to having trucks enter using the exit to accommodate the existing side location. The overall goal of the design is to create a positive dining experience for each person entering in the facility.

Exhibit A-1, a compendium of five (5) renderings of the building and **Exhibit A-2**, Sheet 1 of 2 of the Land Development Plans showing the seating arrangement, both dated 04/15/2021 and both prepared by The Martinson Group LLC, were entered into evidence. Using **Exhibit A-2**, Mr. Martinson stated that there is now a clear delineation between the working areas of the restaurant and the customer areas. The proposed building will be up to code, energy efficient and ADA compliant (on the first floor only), adding that an elevator is not proposed because of the lack of space. He acknowledged that landscaping shown in the renderings does not match the landscaping plans, citing as an example, that landscaping will replace the half wall currently in front of the patio. There will be no windows on the wall facing the neighbors and the entire building will be sprinklered. Finally, he discussed the overall design which features Spanish revival architectural components and connotes a luxurious estate home ambiance. The building adheres to the maximum height allowable of 35' at the tower and chimney with the remainder of the building at a lower height. The increase in building footprint is caused by the improvement in service function, a large entrance vestibule with a generous hostess area and more room around each table, all of which add to the positive dining experience but do not provide additional seating capacity.

Mr. Martinson suggested that exterior materials would include stucco, stone and decorative tiles along with wrought iron railings. A discussion ensued about whether or not the proposed full length windows would be operable. Mr. Martinson affirmed that they are, however because restaurants operate either the heat or air conditioning systems 100% of the time, they are not meant to be opened. When asked if the Applicant would stipulate to making them inoperable (all but one that could be used as an emergency exit), Mr. Martinson responded that he would investigate the code requirements and consider the request.

Another discussion ensued concerning the seating in the loggia section of the first floor. Mr. Schley stated that there are different parking requirements for lounges and taverns and Mr. Martinson asserted that the loggia area is not intended to be a lounge. He reiterated that all seats, except for those at the two (2) bars, are assigned and that the seating in the loggia by the fireplace is for dining only. Drinks and food would be served to those patrons at their seat locations. He then discussed the architectural accents suggested for the interior including arches, decorative tile, wide staircases, sconces and wood beams, adding that the kitchen on the first floor would be partially open.

Mr. Zellely stated that all of the plans for the interior and exterior are conceptual and would be finalized prior to the next hearing.

Questions from the Board included whether one (1) of the two (2) proposed staircases could be replaced with an elevator (code requires 2 staircases); does the Spanish style harmonize with the character of the surrounding area; and will the windows affect the neighbors' privacy. Noting the late hour, Mr. Zellely stated that Mr. Martinson would return at the next hearing with additional testimony to address the concerns voiced that night.

The application was carried to September 16, 2021 with no further notice required.

COMMENTS FROM MEMBERS OR STAFF

Ms. Genirs suggested that future meetings start an hour earlier to provide more time for complex applications such as this one.

ADJOURN

Moved by Mr. Kraus, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 11:04 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 07-07-2021.

06/24/2021v2 dsaw