

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – May 1, 2023
VIRTUAL ONLINE MEETING

1. Statement of Adequate Meeting Notice: Read by Chair Greenebaum at 7:30 pm.

2. Roll Call.

Present – Members Greenebaum, Kramer, McDowell, Sailliard, Traynor, Slocum and Melillo.

Absent – Members Dello Russo, Loeffler and Sedlak.

Board professionals present: Attorney Louis P. Rago, Engineer Robert Brightly and Planner John Szabo, Jr.

3. Approval of Minutes:

Review of draft minutes of 4/17/23 meeting.

Upon review, a motion to approve the minutes as presented was made by Mr. McDowell and seconded by Mr. Slocum.

Voice vote:

All eligible members voted in the affirmative.

4. Communications: The Chair acknowledged the following correspondence:

A. 4/23/23 L. Rago, Esq. email transmittal of 3/17/23 Archer & Greiner, PC / NJAW post hearing brief (21 pp).

B. 4/23/23 L. Rago, Esq. email transmittal of 3/16/23 NJ Division of Rate Counsel post hearing letter brief (15 pp).

C. 5/1/23 L. Rago, Esq. email transmittal of NJ Admin. Law Office Initial Decision re: NJAW Petition for Determination re BOA Denial of Fenwick Tank Application #20-01.

Mr. Rago explained that this initial decision will now go the Board of Public Utilities (BPU) and that the Board of Adjustment and intervenors will have a 13 day window to object to portions of the decision or offer comments. The BPU will then have 45 days to affirm, modify or reverse the opinion. If the BPU takes no action, the decision will stand. After this there will be a window of time in which an appeal can be filed with the Court's Appellate Division. Mr. Rago has contacted the other attorneys to arrange a meeting to discuss how the group wishes to proceed within the first 13 day window.

D. Resignation of BOA Alternate #4 Stephen Reynolds: Chair Greenebaum announced receipt of a notice of resignation from the Board by Mr. Reynolds for personal reasons.

5. Old Business: Memorialize Resolution #22-06 GELB-O'CONNOR – Bulk Variance for Front Porch Addition to Single Family Residence at 62 Center Street Extension, B: 111, L: 32, Zone: R-5; Approved 4/17/23.

Chair Greenebaum read the draft resolution on the record. Upon review, Mr. Brightly recommended revising paragraph #8 on page 3, to change Floor Area Ratio to Impervious Coverage and to state that it is well under 500 S.F. A motion to adopt the resolution as amended was made by Mr. McDowell and seconded by Ms. Kramer.

Roll call vote:

All in favor: Members Greenebaum, Kramer, McDowell, Sailliard, Slocum and Melillo.
Those opposed: None. Those abstaining: None.

6. New Business:

A. BOA Application #22-07 ASSAAD – Bulk Variances for Residence, Pool & Patio Additions to Single Family Residence at 141 Campbell Road, B: 9, L: 7, Zone: R-1; Received 12/15/22; Deemed incomplete 2/2/23; Waiver requests, completeness determination & public hearing scheduled for 5/1/23.

Appearing on behalf of the application were owner Simon Assaad, engineer Stephen Parker, architect Daniel Encin and environmental specialist David Krueger

Before hearing the application, the Board reviewed the applicant's requests for waivers to certify completeness and establish jurisdiction. Chair Greenebaum listed all of the deficient checklist items called out in Mr. Szabo's 2/3/23 review report. Mr. Szabo and Mr. Brightly agreed that the information the applicant provided on the drawings should be adequate for the Board to decide the application. A motion to grant the requested waivers and deem the application complete was made by Mr. Traynor and seconded by Ms. Kramer.

Voice vote:

All members voted in the affirmative.

Mr. Mottola confirmed that the applicant had satisfied notice requirements thereby establishing Board jurisdiction to hear the application.

Mr. Assaad was sworn and confirmed that he is the owner of the subject property. He introduced Mr. Parker, who was sworn and accepted as an expert in his field of civil engineering. He opened by explaining the application and variances being requested. Mr. Parker said that rather than move or leave Bernardsville, Mr. Assaad wishes to make certain improvements to the home in which he currently resides with his family. The property is 8.29 acres in size. It is traversed by the north branch of the Raritan river which leaves about a third of the property developable between it and Campbell Rd. The remainder of the property is unreachable, unusable and vacant, with wetland areas also on site. The Raritan waterway is a Category 1 stream and has a 300' riparian buffer. All of the current and proposed improvements on the property are within this buffer. Consequently, permits are required from the NJDEP prior to any construction, which are in the process of being applied for. A Letter of Interpretation (LOI) is also being applied for to delineate the wetlands and identify transition areas located on the property. The proposed residential expansions are to the rear and left side of the house, with most to occur under the raised roof portion of the home. The applicant proposes to convert Barn #1 to a pool house with an accessory loft office and construct an in-ground pool with surrounding patio. The pool will have a deficient front yard setback of 67.6' where 125' is required. The house's current front setback of 29' will not be further reduced. An additional dry well for the house and two dry wells for the pool and patio are proposed to manage the additional stormwater runoff. All of the proposed project areas are currently lawn but as part of the DEP application significant planting is proposed as depicted on Sheet #5 of the drawings. A buffer averaging plan is also proposed whereby certain buffer areas are reduced and others of an equal amount will be expanded.

Mr. Parker proceeded to discuss the comments in Mr. Brightly's 3/23/23 report letter. Certain responses to those included: the pool is required to be setback 1.5 times the distance required for the front yard setback (125'), which is 187.5'; although temporary, the area of the site that will be disturbed for the proposed planting will require a steep slope variance (in the 15~25% range: 22,207.8 S.F. is allowed with 26,090 S.F. proposed); there were no comments with which the

applicant did not agree or could not comply with. Certain responses to Mr. Szabo's 3/14/23 report comments included: the applicant agreeing to add a landscape planting schedule to the drawings; the dwelling on adjacent lot 5.02 to the east being around 400' to 500' away, with an existing tree row between the two properties; the applicant stating no objections to or issues with any of Mr. Szabo's comments and none with which they cannot comply.

Mr. Parker's responses to questions by members of the Board or its professionals:

(Mr. Brightly) The DEP "permit by certification" number will be added to the drawings.

(Mr. McDowell) The riparian buffer line is not shown on the drawing because it extends beyond Campbell Rd and all of the development areas are within it; the buffer requirement was not in place when the residence and barns were built but were in place when Mr. Assaad purchased the property in 2007; *(Mr. Assaad responded that since the DEP approval will be required to build the proposed work and it is a higher approval authority, they started discussions with the DEP over a year ago and would not have brought the application to the BOA without a high level of certainty of receiving DEP approval).*

(Chair Greenebaum) *(Mr. Assaad responded that Mr. Kruger can further explain the proposed planting area which was required by the DEP; no issues were encountered when installing a septic bed at the northeast corner of where the pool is proposed to go);* the amount of planting is significant and the area indicated as walkway will be grass lawn covered; Mr. Kruger discussed with the DEP the types of plantings they would be looking for before submitting the application to them, what is proposed is in response to those discussions; the plants will provide more of a natural buffer than just lawn; delineating the proposed methods of controlling runoff during construction will be required for Somerset-Union Soils Conservation District approval prior to obtaining a building permit; a second row of silt fences will be installed as part of the plan as requested in Mr. Brightly's January review letter. These are shown on drawing Sheet #3.

Mr. Krueger was sworn and qualified. He clarified that after discussions and virtual meetings with the DEP, applications were filed on 3/3/23 for a LOI, a transitory waiver averaging plan (to reduce the buffer for the proposed improvements) and a special activity waiver for redevelopment (for portions of the house that were over legally existing impervious surfaces). Because of the proximity of the proposed work to the stream and pond, the DEP wanted to see the landscape enhancements to the area. The proposed wetlands transitional vegetation and riparian buffer vegetation will have a higher value than the currently maintained grass lawn. It will enhance the buffer next to the pond, provide additional wildlife habitat, better stabilize the area and increase the recharge area to reduce potential erosion. Mr. Krueger opined that the proposed trees, shrubs, perennials, herbaceous species and seedlings will be an enhanced buffer to the pond and will provide better runoff control than the existing lawn. Any soil disturbance during planting and seeding will only be temporary and sedimentation control measures will be put in place until planted areas have stabilized. None of the existing slopes will be regraded. Silt fences will encapsulate the downhill side of the planting area. Mr. Assaad confirmed Mr. Krueger's understanding that there has not been any erosion of the existing lawn area in the 17 years that he has owned the property. Mr. Assaad explained that they had removed an unused cottage and filled its septic tank on the back side of the pond and that area will also be replanted with native species, but not as extensively as the front side.

Responding to EC Chair Johanna Wissinger, Mr. Krueger explained how a DEP approved transitory waiver averaging plan works.

From his professional experience, Mr. Melillo offered that installing an irrigation system for the approximately quarter acre planting area would help insure its establishment and survival. He said it will take about three years for perennials to root themselves and become part of the natural landscape.

Chair Greenebaum opined and other members agreed that significantly more information needs to be provided regarding the entire planting scheme and associated proposed methods of runoff control. Not enough information is currently provided on the drawings. Mr. Assaad indicated that he is agreeable to providing the more detailed information that the Board finds necessary.

Mr. Encin was sworn and qualified and described the three architectural proposals for the residence. The existing dwelling is a one and a half story structure wherein the ceiling heights in second floor rooms (primarily bedrooms) is reduced to as low as 4' as they approach the outer walls. Accordingly, it is proposed to raise the gable roof an additional 3.5' to 4' to provide for full height, flat ceilinged rooms throughout the second floor. This will produce more interior space without increasing the building's footprint. The addition of a new balcony/deck over a 3' to 4' extension of the basement garage is proposed on the left side of the house. Lastly, a one story sunroom addition to the rear of the house will provide for natural views of the rear of the property. Because the house was constructed many years ago prior to existing zoning requirements, a front yard setback variance is required for the proposed building footprint expansion as the entire house located within the required setback area. Mr. Assaad confirmed that the renovation work proposed to the existing barn would not increase its footprint. An outside patio will be added that will be connected by a walkway to the new pool patio. An existing utility line that used to serve the cottage would provide power for the converted barn, in addition to solar panels that are planned for the roof. Water will come from the existing well and a connection to the existing septic system is proposed. The intent is to renovate the existing barn without building a new structure. The barn's volume will not be increased. It already contains a loft area that will be used as an office. Mr. Assaad was not opposed to having a deed restriction whereby the barn could not be used as living quarters.

Responding to the Chair, Mr. Brightly recommended that the building's corner grade elevations be provided together with new building height calculations.

There were no questions for Mr. Encin from the Board, its professionals or members of the public.

Mr. Assaad accepted the opportunity to continue the hearing to a future date and submitting the Board requested planting details, building height calculations and a copy of the DEP permit application. It would not be necessary to resubmit the entire application but the requested submittals would need to be submitted by June 9th to allow adequate time for reviews by the Board's professionals and agencies for the application to be continued at the June 20th meeting. Chair Greenebaum announced such continuation on the record.

B. Review 5/1/23 Bills List with Invoices:

Upon review, a motion to pay the listed invoices in the amount of **\$2,008.00** was made by Mr. McDowell and seconded by Ms. Kramer.

Roll call vote:

All members voted in the affirmative.

7. Pending Applications: The Chair noted the following applications and their status:

A. BOA Application #22-03 MEGALLA-SCHEID – Bulk Variances for Detached Accessory Structures for Single Family Residence at 601 Mine Brook Road, B: 90, L: 10, Zone: R-2; Received 6/16/22; Deemed incomplete 8/15/22; Awaiting supplemental application documents.

B. BOA Application #23-01 UPTON PYNES REAL ESTATE, LLC – Preliminary & Final Major (7 lot) Subdivision w/ Use & Bulk Variances & Design Waivers; 67 Ravine Lake Road, B:10, L:23, Zone: R-1-10; Originally filed with Planning Board 10/24/22; Determined to be jurisdiction of and to be heard by Board of Adjustment; Deemed incomplete 3/30/23; pending agency reviews.

C. BOA Application #23-02– 51 BERNARDS AVE. ASSOCIATES, NJP – Minor (3 lot) Subdivision w/ Variances; 51 & 53 Bernards Avenue, B:112, L: 6 & 7, Zone: R-5; Originally filed with Planning Board 11/1/22; Determined to be jurisdiction of and to be heard by Board of Adjustment; Pending new application to BOA with additional fee and escrow payments..

8. Executive Session: None.

9. Comments from Members: Chair Greenebaum reminded Board members to complete their annual online financial disclosure statements.

10. Comments from Staff: Mr. Rago said he would have the draft Maddali resolution and revised By-Laws ready for review at the next meeting, and that he could update the Board in executive session as to *next steps* in the NJAW litigation.

Mr. Mottola said that he had no new information to report regarding additional "per term" DEP stormwater review training since the DEP's website had changed and the prior posted videos no longer exist. He has inquired with DPW director John Macdowall and is awaiting a response.

11. Adjournment: Motion to adjourn: Mr. McDowell. Second: Ms. Kramer.
Chair Greenebaum adjourned the meeting at 9:25 pm.

Respectfully submitted,



Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: Gelb-O'Connor-62-Center-Extension-Assaad-141-Campbell-Parker-Encin-Krueger.