

**PLANNING BOARD**  
**BOROUGH OF BERNARDSVILLE**  
**Minutes – May 25, 2023**  
**VIRTUAL ONLINE MEETING**

1. **O.P.M.A. Statement:** A statement of adequate meeting notice and adherence to the state mandated emergency remote meetings protocols, as set forth on this meeting's web-posted agenda, was read by Chair, Robert Graham, at 7:41 pm.
2. **Roll Call:**  
Present – Members Canose, Graham, Horowitz Kellogg, Otteau and Simoff.  
Absent – Members Gardner, Macmillan and McQueen.  
Board Professionals Present: Attorney Steven Warner, Planner John Szabo, Jr. and Engineer Robert Brightly.
3. **Minutes:** Review draft minutes of 5/11/23 meeting.  
Upon review, a motion to approve the minutes as presented was made by Mayor Canose and seconded by Mr. Simoff.  
Voice vote:  
All eligible members voted in the affirmative.
4. **Communications:** The Chair acknowledged receipt of the following:
  - A. 5/25/23 Vehicle Turning Exhibit by Dykstra Walker Design Group (re #6).
  - B. 5/9/23 A. Suriano email transmittal of introduced Ordinance #2023-1966: Extending Permitted Sidewalk Sale Hours, w/ draft PB findings resolution #2023-13 (re #7A).
  - C. Revised 2023 Planning Board Roster.
5. **Business of Visitors not related to the agenda:** None.
6. **Old Business:** Continued Application #SP-238A – EQUINET PROPERTIES, LLC – AMENDED PRELIMINARY & FINAL RESIDENTIAL SITE PLAN w/ Variances & Design Waivers; 55 Claremont Rd., B:71, L:6, Quimby Lane Redevelopment Zone - Subarea 6; Originally heard 6/16/22; Amended app. rec'd. 3/16/23, Deemed complete and last heard 5/11/23.

Appearing on behalf of the applicant were attorney Roy Kurnos, Equinet Properties principal Richard Reimers, engineer Mark Gimigliano and architect David Minno. Mr. Warner announced that Mr. Horowitz and Mr. Otteau had watched and listened to the recording of the prior hearing and were qualified to vote on this application.

Exhibits introduced:

- A5 – 2/16/23 Rendered Architectural Plans by Minno Wasko Architects and Planners (4 pp).  
A6 – 5/25/23 Vehicle Turning Exhibit by Dykstra Walker Design Group

Mr. Kurnos reopened the application noting the turning radius exhibit that their engineer had submitted for this hearing and the report that had been received from the County Planning Board. The prior hearing had ended at the conclusion of Mr. Minno's testimony. Responding to Ms. Kellogg he said that a payment to the Borough's affordable housing trust fund, in the amount of approximately \$246,000, in lieu of constructing on-site affordable dwellings, has been agreed to with the Borough. This was provided for in the 3/9/23 redevelopment agreement between Equinet and the Borough, although the amount still needs to be added to the written agreement as the amount is currently blank. How the money is used will be at the Borough's discretion.

Mr. Minno's responses to members of the Board and its professionals:

(Mr. Brightly): It is not uncommon for gas, electric and water meters to be allowed to be located inside an open air garage such as this. Acknowledging that the architectural plans he displayed at the prior hearing were not the same as those submitted for the application, they were marked as Exhibit A5. This exhibit more accurately depicts the existing site conditions on the right side of the building than the submitted drawings of the same date.

(Ms. Kellogg): Responding to her concern about landscape plantings in the deficient 7' right side yard potentially blocking fire company access to the rear yard, he said there is no code requirement to have a set of stairs on that side. The single access from the Mill St. side is adequate based on building and fire codes. He asked if the town has an aerial fire truck.

A lengthy discussion ensued among Board members regarding perceived obstacles to firefighting capabilities due to the slope and narrowness of the south side yard.

(Mr. Simoff): *Mr. Gimigliano responded that they have received DEP verification of the limits of the flood plain, the floodway and riparian zone and have applied for a permit to construct this development within those regulated areas. The application is under review by the DEP, with a permit expected to be issued sometime next month. There is minimal disturbance in the flood hazard area. What's regulated in the flood hazard area is fill. No fill is being brought to the flood hazard area. There's a small part of the building which generates a slight amount of fill which they are compensating for by regrading behind the building. The main permit is for disturbance in the riparian zone. The rear yard area, the existing driveway and the existing home are all considered previously disturbed areas, which are not counted against the allowable disturbance. They comply with the allowed disturbances for driveways and other general grading activities. Regarding the County's request for a road area dedication, they will be requesting that it be an easement instead, which has been granted by the County in similar instances. It would not require the building to be moved further back from the street. They are awaiting a response from the County as to whether any portions of the front stairs would be allowed within an easement. Mr. Szabo commented that a dedication would affect the size of the lot whereas an easement would not. It would be a reasonable approval condition that the applicant return to the Board in the event the County requires a dedication, contrary to the applicant's representation that an easement is anticipated. Mr. Gimigliano further responded that on the other housing project they are doing on Claremont Rd., the County first asked for a dedication and later agreed to an easement. And for that project, the centerline of the road was measured to the center of the traveled way, which is the approximate location of the painted double yellow lines. Measuring 30' from there, the building is still a foot or so away, but its front steps would be within the easement. If the County does not permit the encroachment, the building will be adjusted to have a recessed entrances as needed to avoid encroaching.*



A lengthy discussion ensued among the Board, its professionals and the applicant about the feasibility of the project given the hanging questions raised by the County Planning Board's report including roadway dedication vs easement and the location of Claremont Road's center line; questions about vehicular sight lines; the pending status of the DEP permits to allow work in the riparian zone; the numerous drainage issues raised in Mr. Brightly's report; and the lack of soils testing and fire department input.

Mr. Reimers conceded that they should pause the hearing of this application until they are able to further discuss their proposal with the County and resolve the issues raised by its report; address the parking garage egress matter; advance the status of the DEP permit issuance; and address other issues raised by Mr. Brightly and the Board.

Chair Graham asked that the applicant obtain the Fire Prevention Bureau's input, including that of the Chief. Mr. Simoff asked that the turning template exhibit prepared by Mr. Gimigliano be amended to include the movements of a standard AASHTO vehicle and whatever trash collection vehicle that would come to the site. Ms. Kellogg asked that testing be done of soils beneath where the stormwater management basins will be built to establish the elevation of the high water table. Mr. Szabo asked that the applicant look at the ADA accessibility requirements for the walkway behind the building, including width and surfacing material, and that their planner be prepared to testify as to the rationale of the applicants proposal and any needed relief if ADA requirements cannot be met. He said that what's important for the Borough at this point is to obtain the conservation easement across the property so that it can later become a part of the greater QLRDP's vision.

Mr. Gimigliano said that they will prepare updated plans that address Mr. Brightly's comments and reflect the information obtained from discussions with the County and from soils testing.

There were no questions for Mr. Minno by members of the public when the Chair opened the hearing for same.

Upon discussion, and in consideration of the Board's upcoming schedule and tasks set forth for completion by the applicant, Mr. Warner announced, with the applicant's concurrence, that the hearing of this application will be continued at the Planning Board's 7/13/23 meeting. Mr. Kurnos agreed to extend the time of decision to the end of July and to emailing the extension in writing to Mr. Mottola.

## **7. New Business:**

**A. D26 Master Plan Consistency Review Intro'd Ord. #2023-1966 re: Extending Permitted Sidewalk Sale Hours; Introduced 5/8/23; Public hearing 6/12/23; *Planning Board D26 review scheduled for 5/25/23.***

Mr. Warner noted that the review before the Board is not a public hearing but that the Board should hear its planner's advice as to whether or not the ordinance is consistent with the master plan. He also referenced the draft resolution prepared in anticipation of a not inconsistent finding.

Mr. Szabo opined that the matter of extending the hours for sidewalk sales is not a master plan issue per se, and would therefore not be inconsistent. He said that one could even argue that because the master plan seeks to revitalize the downtown, that this could be considered a tool to accomplish that. Certainly, from that perspective, it would support the master plan. Mr. Szabo said he sees no impact whatsoever on the master plan itself.

There were no comments on the introduced ordinance or draft findings resolution #2023-13 from members of the Board. Mr. Simoff moved adoption of the draft resolution finding introduced Ordinance #2023-1966 not inconsistent with the master plan, and was seconded by Mr. Otteau.

Roll call vote:

All members voted in the affirmative.

**B. Review 5/25/23 Bills List w/ Invoices:**

Upon review, a motion to pay the listed invoices in the amount of \$9,914.00 was made by Ms. Kellogg and seconded by Mayor Canose.

Roll call vote:

All members voted in the affirmative

**8. Board Reviews/Public Hearings/Pending Applications:** The Board acknowledged the following matters and their current status:

*A. Application #SP-246 – FEST, LLC. – Addition & Renovation to Existing Mixed Use Bldg.; 12 Mine Brook Road, B: 99, L: 2, Zone: D-C; Received 2/6/23; Deemed incomplete 5/22/23.*

*B. Application #SP-247 – AR at BERNARDSVILLE, LLC – PRELIMINARY MAJOR SITE PLAN w/Variances & Design Waivers; 39 Olcott Sq. + 5 Morristown Rd.; B:125, L: 1-3, Zone: D-C; Received 3/21/23; Pending completeness review.*

**9. Business of Visitors – second opportunity:** None.

**10. Executive Session:** None.

**11. Adjournment:** Chair Graham adjourned the meeting at 9:31 pm.

Respectfully submitted,



Frank Mottola, Planning & Zoning Boards  
Administrative Officer & Recording Secretary

Keywords: Equinet-QLRDP-55-Claremont-Kurnos-Reimers-Gimigliano-Minno-1966-sidewalk.