

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – September 7, 2021
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, David Greenebaum, at 7:31 pm.

2. **Roll Call:**

Present: Members Carton, English, Greenebaum, Kramer, McDowell, Slocum and Traynor.

Absent: Members Dello Russo, Sedlak and Sailliard.

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

3. **Meeting Minutes:**

Review draft minutes of 8/2/21 meeting:

Upon review a motion to approve the minutes as presented was made by Ms. Kramer and seconded by Mr. English.

Voice vote:

All eligible members voted in the affirmative.

4. **Communications:** The Board acknowledged and/or discussed the following correspondence:

A. The New Jersey Planner, July/August 2021, VOL. 82, No. 4.

Based on an article that appeared in this issue, Chair Greenebaum questioned what the Borough needs to do relative to state mandated climate change-related vulnerability assessment. Mr. Szabo responded that the state is requiring municipalities to assess their vulnerabilities and find ways to become more sustainable. Master plans need to be updated accordingly the next time their land use elements are amended. This can also be accomplished as part of a master plan reexamination. Mr. Szabo said he plans on discussing this with the Planning Board at its next meeting. He noted that the state is also mandating that municipalities begin planning for and implementing electrical vehicle charging stations. The Chair recommended that Board members read the article.

B. 5/20, 8/24 and 9/2/21 L. Rago, Esq. emails to A. Ochs, Esq. re 9/7/21 continued hearing of application #19-09 Ochs (re 5B).

C. 9/7/21 A. Ochs, Esq. email to F. Mottola re request for hearing continuation to a November meeting (re 5B).

5. **Old Business:**

A. Continued Application #19-09 OCHS – Bulk variances for residential addition and retaining wall; 180 Round Top Road, B: 81, L: 24, Zone: R-1A; Received 9/24/19; Decision required by 2/29/20. Previously heard 12/2/19 & 11/16/20; Decision deadline extended to 12/31/21; Scheduled to be continued 9/7/21.

[Eligible to vote: Greenebaum, Sailliard, Kramer, Traynor, McDowell and Slocum.]

Pursuant to the applicant's 9/7/21 request to carry this application to one of the two November meetings, the Board discussed its status. The Board was amenable to carrying the hearing to its 11/15/21 meeting, provided certain conditions are met. Given the time that has passed since this application was commenced and was last heard, the Board felt that the application should be heard de novo. The applicant will have to re-notice but not have to pay a new application fee. The existing escrow account balance will have to be evaluated and adequately funded as needed. A professional engineer capable of evaluating the current condition of site grading and drainage and recommending any remedial actions that may be necessary must be hired. A representative of the Environmental Commission must be allowed to accompany said engineer in evaluating the site. New/supplemental documents must be submitted by November 1st, both in digital and hard copy formats, to provide adequate time for Board professionals' and agencies' reviews. Should the applicant fail to comply with any of the foregoing, the Board will dismiss the application without prejudice. Per the Board's request, Mr. Mottola will convey the above to the applicant.

B. Memorialize Resolution #21-04 PHILLIPS – Bulk Variances for Addition & Alteration to Single Family Residence at 21 Chestnut Avenue, B: 34, L: 3.01, Zone: R-2; Received 4/8/21; Deemed incomplete 6/21/21; Deemed complete, heard and approved 8/16/21.

Chair Greenebaum read on the record the resolution as marked up by Mr. Brightly. Upon review, the Board agreed that condition #5 should be amended to require the particulars of this condition to be noted on the revised plans. A motion to adopt the resolution as amended was made by Mr. McDowell and seconded by Mr. English.

Roll call vote:

All in favor: Members Carton, English, Greenebaum, Kramer and McDowell.

Those opposed: None. Those abstaining: None.

6. New Business:

A. Application #21-06 GREGORY – Bulk Variances for New Detached Barn on Single Family Residential Lot at 130 Chapin Road, B: 3, L: 7, Zone: R-1; Received 4/29/21; Deemed incomplete 6/21/21; Waiver requests, completeness determination & hearing scheduled for 9/7/21.

Appearing on behalf of the applicant were attorney David Brady, owner Edward Gregory, engineer Paul Anderson and architects Sarah Susanka and Jackson Bangs. Appearing on behalf of neighboring objectors Richard and Elizabeth Goldberg (14 Bliss Road, Mendham, NJ) was attorney Frank Guagliardi.

Exhibits Introduced:

A1 – Power Point 35-slide digital presentation.

Regarding waiver requests and completeness of the application:

The Board reviewed the nine checklist items that were deemed incomplete in Mr. Szabo's 6/23/21 report. Subsequent to this report, the applicant submitted supplemental documents and revised drawings dated 8/11/21, that provided a number of the previously omitted checklist items. The applicant said that other items would be provided in hearing testimony via exhibits and that items

number eight and nine continue to be not applicable. The Board agreed that all previously deficient checklist items, except number one, had been or will be adequately addressed and that the signature block (item 1) will be provided on a revised drawing. A motion to grant waivers of listed items numbers two through nine and deem the application complete was made by Mr. McDowell and seconded by Ms. Kramer.

Voice vote:

All members voted in the affirmative.

Mr. Brady introduced the application stating that the subject property is comprised of two lots, one in Bernardsville and one in Mendham Borough. All of the proposed construction will take place on the Bernardsville lot. Variances were obtained from this Board in 2016 to reconstruct the principal dwelling, which was completed, and is now occupied by Mr. and Ms. Gregory. The current proposal is to build a detached accessory barn to the side of the house that was used as a staging area for the house's construction. Consequently, the ground in that location has already been disturbed and compacted. Variances are needed for having an accessory structure in the front yard; insufficient side yard setback; insufficient setback from the road; exceeding the maximum allowable floor area; exceeding the maximum allowable impervious lot coverage; and, excessive slope disturbance in the 25% to 29.99% and the 30% and greater categories. The applicant believes the majority of the engineer's and planner's comments have been addressed in the latest submitted documents/drawings and will be reviewed in the testimony that follows.

Mr. Guagliardi was provided the opportunity to introduce himself and the clients he represents. He said his clients only received notice of this application last Friday and he himself just today. He asked that the Board adjourn the hearing until they have had sufficient time to retain their own professionals to more thoroughly review the application to assure that any stormwater runoff will be adequately controlled by the proposed stormwater plan. Mr. Brady objected to delaying the hearing stating that notice was legally provided as required, that the hearing will not be concluded at tonight's meeting and based on the neighbors' concern, he will make their engineer Mr. Anderson available at the next meeting the hearing is continued. Chair Greenebaum agreed that the hearing should proceed this evening and there will be adequate time prior to its continuance for the objectors to review the application.

Mr. Gregory was sworn and stated that he and his wife have owned and lived on the property since 1999. The proposed barn is to be used for non-commercial agricultural purposes, equipment storage and other possible endeavors of his, such as working on classic cars. A small home office is proposed for the barn's loft. He is interested in planting a vineyard and a small orchard. There is a much larger barn on the property across the street than what he is proposing, which the architects will show in their presentation. His property is the last occupied lot on the street and they own the property beyond that. No neighbors' driveways are anywhere near the location of the proposed barn. He presently has no plans to keep farm animals on the property but stipulated that if he wished to do so in the future and a variance is required, he will apply for it at that time. Responding to Mr. Guagliardi, he said that any vehicle maintenance he would perform in the barn would not be of a commercial nature. The house currently has three existing garage spaces.

Mr. Anderson was sworn and qualified. He stated that he is familiar with the site and prepared

the plans submitted for the application. Using some of the slides from A1, he described current and proposed site conditions. The proposed location for the barn has a primarily level grade. The ground became compacted from being used as a staging area during reconstruction of the house in 2017, which made it unusable as a septic field. The septic system had to be moved to an area downhill from the house. Grass pavers are proposed for use in the driveway to the barn. Total impervious coverage of 24,686 SF is proposed, where 19,933 SF are permitted. There would be numerous steep slope disturbances if the barn were to be located elsewhere on site. Total floor area of 16,118 SF is proposed, where 12,122 SF is allowed. A front yard setback of 44.7' is proposed, where 187.5' is required. A side yard setback of 25.9' is proposed, where 54.4' is required. The distance to the next closest dwelling from the deficient side yard setback is over 500' so the impact is di minimis. An area of 605 SF new slope disturbance in the 25% to 29.99% category is proposed, where 500 SF is allowed. Several trees in the area of the proposed barn require removal. Proposed measures to mitigate stormwater runoff impact to neighbors include the installation of dry wells to capture roof runoff and a 500 gallon cistern to capture rain water for irrigation uses. A significant landscape plan to replant all disturbed areas of the site is also proposed. A discussion ensued regarding new versus previously disturbed steep slope areas, including those approved in 2015 for the reconstruction of the residence and those required for relocating the septic system downhill. Mr. Anderson provided numbers calculated for cumulative areas of slope disturbance. He does not anticipate disturbing any steep slope areas for a barn construction staging area. The applicant agreed to come back with more understandable calculations and/or a revised steep slope disturbance map. The barn's roof will be approximately 11' higher than Chapin Road, as measured to the top of the cupola. The roof's ridge is only about 3' higher.

Per Mr. Guagliardi's questions, Mr. Anderson said he was unaware that in April 2019 stormwater runoff damaged his client's property. Mr. Anderson said that their property is downstream of the headwaters of a minor stream that runs between the 110 and 130 Chapin Rd. properties and that with a severe storm, flooding could occur. He did not believe it to be attributable to development on the Gregory property. The runoff calculations were performed for new impervious areas, as required by the ordinance, for a 3" rainfall. An updated stormwater O&M manual will be provided as required.

Architects Susanka and Bangs were sworn and qualified. Ms. Susanka is the design architect and Mr. Bangs is an employee of Sionas Architects, who will be the architects of record. This was also the arrangement for the Gregory's 2015 residence application. Displaying A1, Ms. Susanka presented photographs of the existing development and photo montages of the proposed barn as it will appear in situ. She said it was her objective to make the barn as invisible as possible from the road. The density of the foliage prevents views of the house and property except when looking directly down the driveway. Extensive landscaping is proposed around the barn. The property is very steep and therefore is limited in where a building can be placed without creating extensive slope disturbance. Moving the barn closer to the house would make it seem like it was competing with the house due to its width and it having the same roof slope. Mr. Bangs displayed photos of existing barns from the surrounding area. The proposed landscape plan, floor plans and building elevations were displayed and explained. Proposed plantings will be of types native to the area. Mr. Gregory explained that the tractor would be driven into the main floor of the barn, not the basement level, so the ground beyond the basement will not become compacted.

Per Ms. Susanka, the size of the barn derives from scaling its mass to be compatible in appearance with the house, the art studio and the site. The scale and appearance of the barn on the lot across the street also played a part in the design of the subject barn. Mr. Gregory added that the barn's size also has to do with space requirements for its potential interior uses. The area of the main floor is 3,996 SF. Mr. Bangs responded that the pitch of a roof plays no part in the amount of water it sheds.

Per the Chair's request, the applicant agreed to provide a summary of all the structures that contribute to the total impervious area of the site. As agreed to by the applicant, the hearing of this application will be continued on October 18th.

B. Review 9/7/21 Bills List w/ Invoices.

Upon review, a motion to approve the listed invoices in the amount of **\$1,525.50** was made by Ms. Kramer and seconded by Mr. Slocum.

Roll call vote:

All members voted in the affirmative except Mr. Carton, who abstained.

7. Pending Applications: The Board acknowledged these applications and their respective status:

A. Continued Application #20-01 NJ AMERICAN WATER CO., INC. – Fenwick Tower
–Preliminary and Final Major Site Plan with Conditional Use & Bulk Variances for replacement water tank at Mendham Road; B: 5, L: 5, Zone: R-1; Deemed complete & hearing commenced on 11/16/20, also heard on 3/1, 4/5, 5/17 & 8/2/21; Decision deadline extended to 9/30/21; Scheduled to be continued 9/20/21.

[Eligible to vote: Carton, English, Greenebaum, Kramer, Sailliard, McDowell and Slocum.]

B. Application #21-07 SCOTT – Bulk Variances for Driveway and Patio Expansions at 371 Claremont Road B: 6, L: 10, Zone: R-1-10; Received 5/10/21; Deemed incomplete 6/29/21; Waiver requests denied & deemed incomplete 8/16/21; New waiver requests, completeness determination & hearing scheduled for 10/4/21.

C. Continued Application #20-07 BANK OF AMERICA (ATM) – Amended Site Plan w/ Dimensional Variances; 37 Morristown Rd.; B:125, L:8, Zone: C-1; Rec'd 8/12/20; Previously heard 11/2 & 12/7/20 and 2/16 & 4/5/21; Decision deadline extended to and scheduled to be continued 10/18/21.

[Eligible to vote: Carton, English, Greenebaum, Kramer, McDowell, Sailliard, Sedlak and Slocum.]

D. Application #21-08 INCARNATO – Bulk Variances for In-ground Pool w/ Patio & Detached Shed at 7 Oak Place, B: 46, L: 17, Zone: R-2; Received 7/15/21; Pending completeness review.

E. Application #21-09 LIOI – Bulk Variances for New Single Family Residence w/ attached garage at 19 Bodnar Street, B: 42, L: 6, Zone: R-5; Received 7/16/21; Pending completeness review.

F. Application #21-10 LEE – Bulk Variances for New Single Family Residence w/ attached garage at 20 Pfizer Road, B: 17, L: 3, Zone: R-1; Received 7/20/21; Pending completeness review.

G. Application #21-11 VIGNEAULT – Bulk Variances for (existing) In-ground Pool at 31 Garibaldi Street, B: 113, L: 10, Zone: R-5; Received 8/25/21; Pending completeness review.

8. **Executive Session:** None.
9. **Comments from Members:** None.
10. **Comments from Staff:** Mr. informed the Board that he will not be available to attend the September 20th meeting when the NJAW application will be continued but that a planner from his office would be briefed on the application and appear in his stead.
11. **Adjournment:**
Motion to adjourn: Mr. McDowell. Second: Mr. English.
Voice vote:
All members voted in the affirmative.
Chair Greenebaum adjourned the meeting at 11:00 pm.

Respectfully submitted,



Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: Phillips- resolution-Chestnut-Ochs-Round-Top-Gregory-Chapin-Brady-Guagliardi