

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – January 17, 2022
VIRTUAL ONLINE REORGANIZATIONAL & REGULAR MEETING

1. **Statement of Adequate Meeting Notice:** Read by temporary Chair Greenebaum at 7:31 pm.
2. **Oaths of Office:** Administered by Board Attorney Rago to renewed members Diana Kramer and Paul Sedlak and, renewed Alternate #1 Rich Traynor.

3. **Roll Call:**

Present – Members Carton, Greenebaum, Kramer, McDowell, Sailliard, Sedlak (8:03 pm), Slocum and Traynor.

Absent – Mr. Dello Russo

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

4. **Election of Officers:**

A. (Mr. Rago officiating) Nomination of David Greenebaum as Chair by Mr. Carton and second by Mr. McDowell. Hearing no others, nominations were closed by Mr. Rago.

Roll call vote to affirm Mr. Greenebaum as Chair:

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

B. Several members were nominated as Vice Chair but all declined for various reasons. Ultimately, the Board agreed to postpone further nominations until receipt of the Mayor and Council's updated membership roster that will indicate any position changes that are made.

5. **Annual Resolutions:** Chairman Greenebaum read each of the following resolutions on the record prior to any discussion and/or vote on each:

#01-2022: 2021 Meeting Schedule

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Ms. Kramer.

Voice vote:

All members voted in the affirmative.

#02-2022: Administrative Officer – Frank Mottola.

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Ms. Kramer.

Voice vote:

All members voted in the affirmative.

#03-2022: Attorney – Louis P. Rago, Esq.

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Traynor.

Voice vote:

All members voted in the affirmative.

#04-2022: Engineer – Ferriero Engineering, Inc. (Robert Brightly, P.E.)

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Ms. Kramer.

Voice vote:

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

#05-2022: Planner – Burgis Associates, Inc. (John P. Szabo, P.P., AICP)
Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Ms. Kramer.
Roll call vote: All members voted in the affirmative.

#06-2022: Official Newspapers – Bernardsville News & Courier-News.
Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Slocum.
Roll call vote: All members voted in the affirmative.

6. Approval of Minutes:

A. Review draft minutes of 11/15/21 meeting.

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

Voice vote:

All eligible members voted in the affirmative.

B. Review draft minutes of 12/6/21 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

7. Communications: Copies of the following documents were distributed to the Board and the Chair briefly touched on each of them:

A. 1/10/22 T. Czerniecki email re: Borough support for BOA defending its denial of application #20-01 NJAW-Fenwick Tank.

B. 1/11/22 A. Suriano email re: Council authorization of temporary pumps at NJAW booster pump station.

C. 1/13/22 Ed English email re: Resignation.

D. Draft 2022 BOA Roster:

Mr. Mottola asked that Board members let him know if they have any changes they would like made to the roster regarding their personal information.

8. Old Business:

**A. Continued 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;
Completeness determined & hearing commenced 12/6/21.**

Appearing on behalf of the application were owner/applicant Keron Incarnato and engineer Jeffrey Egarian, both of whom remained under oath from their prior appearance on 12/6/21. Mr. Szabo noted that since the prior hearing the applicant has submitted an updated site plan, revised to 12/30/21. Most of the items listed as missing on his 9/12/21 report have been addressed. A waiver from providing a drainage map of the surrounding area remains requested and a landscape plan has not been submitted as requested by the Board at the prior hearing.

Per Ms. Incarnato, in order to eliminate the impervious coverage variance due to a 116 S.F. overage, the shed and stepping stones to it, which equal 202 S.F., have been removed. This, however, is not reflected on their latest revised drawing of 12/30/21. She said that she had emailed a copy of their landscape plan to their neighbors that requested seeing it at the last meeting. It was not her understanding that the Board wanted to see a copy of the preliminary

landscape plan but she agreed to provide it, with the fence material indicated. She offered to plant evergreen screening on her neighbor's property to hide their view of the fence if they wish.

Mr. Egarian described plan revisions made as a result of the prior hearing including, providing additional topography of surrounding areas; amending the SWM plan to add a dry well in the front yard that is connected to the two front roof leaders to collect runoff from 852 S.F.; adding PVC yard drains around the pool and patio to eliminate stormwater runoff toward the north and have it discharge onto Locust Drive; indicating silt fences and the limits of disturbance.

Mr. Brightly commented that the yard drains shown in the rear yard and to the east of the pool patio are not labeled as such and there no spot elevations that demonstrate the drainage will work. He suggested, and the Chair agreed, that an enlarged pool area drainage plan should be submitted for his review. Mr. Egarian addressed the comments from Mr. Brightly's 1/14/22 review report. He took no exceptions to providing the additional and/or updated information requested. Considering the above impervious reductions and collection of the front roof area runoff, 1,509 S.F. of new impervious runoff remains uncollected by any infiltration devices and therefore require a waiver from the Board. Consequently, some form of associated mitigation is required, such as a payment to the Borough equal to the cost of one drywell. Mr. Brightly suggested the applicant consider installing a trench drain across the driveway at about the 100' contour that would collect water from about 1,500 S.F. of the driveway and then be directed into one of the front yard drywells.

Mr. Rago had Mr. Szabo confirmed that with the applicant-proposed shed removal and the reduction in impervious coverage, the only remaining variances required are for nonconforming side yard setbacks on two sides of the pool.

Questions from members of the public:

Scott Harrington, 15 Oak Place: relocation of drywells from side of property to front yard; possible alternate location for pool equipment; location of wood fence relative to property line.

Chair Greenebaum summarized the additional information requested by the Board including revised plans containing the modifications agreed to by the applicant, an enlarged pool area drainage plan and the landscape plan. The Board was unwilling to vote on the application without first seeing the supplemental information. It was agreed and announced that this application will be continued at the 2/7/22 meeting, with no further notice to the public required. The Chair asked that the applicant submit the supplemental information at least 10 days prior to the next hearing date which is 1/27/22.

B. Continued application #21-11 VIGNEAULT – Bulk Variances for (existing) In-ground Pool at 31 Garibaldi Street, B: 113, L: 10, Zone: R-5; *Completeness determined & hearing commenced 12/6/21.*

Appearing on behalf of the application were owner/applicant Thomas Vigneault, Esq., engineer Jeffrey Egarian and pool installer & owner of Metro Pools, Phil Picarello. Mr. Vigneault and Mr. Picarello were sworn and Mr. Egarian remained under oath from his prior appearance on 12/6/21. Mr. Szabo prefaced testimony stating that the applicant has, since the prior hearing, submitted a revised site plan, last dated 12/30/21 and a pool location plan dated 11/11/21. Most of the items listed as missing on his 10/18/21 report have been provided except for contours extending out 100' from the property, elevations at all corners of the building, drainage area map, survey of preexisting conditions prior to construction (requested by the Board).

Mr. Egarian stated that his office had provided copies of the 11/11/20 plan submitted to the Building Department and approved for permits. This was utilized to install the pool. Also provided were copies of the deed and his above cited revised drawing. The pool and coping are indicated as existing structures on the drawing. A 10/1/20 survey by PAX surveying was used to create the site plan. A subsequent pool location survey was performed, which was utilized to create the variance drawing. It was noted that the updated survey was issued without a revision date having been added by the surveyor.

Mr. Picarello stated that all required permits for the pool were obtained. The pool was constructed too close to the side property line because he mistook the fence line on the drawing as being the property line. (Responding to Mr. Carton, Mr. Mottola explained that of the two drawings submitted since the prior, initial hearing, neither are the Construction Official signed drawing typically issued with construction permits. Nor are either of them the original survey submitted for the construction permit that the Board had requested.) According to Mr. Picarello and Mr. Vigneault, neither of them received a signed, "Issued for Construction" drawing from the Borough's Building Department. They said the plan submitted to the Board stamped by Construction, "RECEIVED DEC 14 2020", was all that was issued to them with the signed permit cards. The drawing remained on site and available to the inspectors throughout construction. They said there were several building department inspections but no one questioned the pool's location. Attempts to mitigate the error cooperatively with the neighbor, including buying land from him, were not successful. Short of moving the pool, their only recourse was to seek a variance. The existing pool fence, which was installed by the neighbor, replaced his prior chain link fence. The new fence has been constructed on the property line. Mr. Vigneault has contracted to install his own matching, solid PVC pool fence directly next to the neighbor's fence, but is waiting for Board approval before proceeding with installation.

Mr. Egarian reviewed the comments from Mr. Brightly's 1/14/22 report. He took no exceptions to providing the additional and/or updated information requested. Some of the questions asked had been verbally addressed earlier in this hearing. Mr. Vigneault reported that his neighbor at 33 Garibaldi St., after putting up his new fence, directed two drainage sources toward his property; the runoff from which is affecting a downhill neighbor at 32 Maple. If approved to do so, a planned retaining wall at the rear of his property will solve the drainage issues created by his neighbor's runoff. At the Board's request, after extensive discussion of grading, drainage and runoff particulars, the applicant agreed to provide an updated grading and drainage plan and copies of the original, pre-pool, survey. It was agreed and announced that this application will be continued at the 2/7/21 meeting, with no further notice to the public required. It was required that the applicant submit the requested information at least 10 days prior to the next hearing date.

C. BOA 2021 Annual Report – Status update:

Mr. Sailliard, who is preparing last year's report, said he had not yet seen the Chair's emailed comments but will do so quickly.

9. New Business: Review 1/17/22 Bills List with Vouchers (\$7,081.25).

Upon review, a motion to pay the listed invoices, in the amount of \$7,081.25, was made by Mr. McDowell and seconded by Ms. Kramer.

Roll call vote:

All members voted in the affirmative.

10. Pending Applications: The Board acknowledged and/or briefly discussed the following applications and their status:

A. Application #21-12 JEPSEN – Request for D68 Certificate of Nonconforming Use at 161-163 Mount Airy Road; B:119, L:7 & 8; Received 10/4/21; Deemed complete 12/20/21; Scheduled to be heard 2/7/22.

B. Application #21-13 SELLERS - Conditional Use Variance for Detached Caretakers Cottage at 140 Post Kennel Road, B: 27, L: 1, Zone: R-1; Received 12/3/21; Pending completeness review.

11. Executive Session: Matters of Pending Litigations re NJAW appeal of water tank denial:

Chairman Greenebaum read on the record the resolution to go into executive session.

Motion to close the public meeting and reconvene in executive session: Mr. McDowell.

Second: Mr. Sedlak.

Roll call vote: All members voted in the affirmative.

It is anticipated that the matters discussed in closed session may be disclosed to the public upon determination of the Board that the public interest will no longer be served by such confidentiality.

Motion to close the executive session and reopen the public meeting: Mr. Carton.

Second: Mr. Sedlak.

Voice vote: All members voted in the affirmative.

A motion authorize Board Attorney Rago to defend the Board's denial of the NJAW water tank application on appeal to the BPU was made by Mr. Slocum and seconded by Mr. Carton.

Roll call vote:

All members voted in the affirmative.

12. Comments from Members:

The Chair opined that the Building Department could have done a better job from an inspections standpoint identifying that the pool in the Vigneault application was not in the proper place once excavated. He thought a comment about better vigilance by the Building Department should be added to the annual report. But before doing that, the Board wanted to gather more facts internally. Mr. Mottola was asked to obtain a copy of the signed permit plans that accompanied the pool permit as well as a copy of the inspection log from the permit jacket. A copy of whatever is obtained should be sent to the applicant.

13. Comments from Staff: None.

14. Adjournment:

Motion to adjourn: Mr. Carton.

Second: Mr. Slocum.

Chair Greenebaum adjourned the meeting at 11:05 pm.

Respectfully submitted,



Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: reorganization-resolutions-Incarnato-Oak-Place-Vigneault-Garibaldi-pool.