

BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
**Minutes – March 7, 2022**  
VIRTUAL ONLINE MEETING

1. **Statement of Adequate Meeting Notice:** Read by Chair Greenebaum at 7:31 pm.
2. **Oaths of Office:** Administered by Board Attorney Rago to reassigned and new members:

Edward McDowell to Full Member (unexpired Carton 1/1/21 – 12/31/24).  
Thomas Slocum to Alternate #1 (unexpired McDowell 1/1/22 – 12/31/23).  
Danielle Loeffler (new) Alternate #2 (unexpired Slocum 1/1/21 – 12/31/22).  
Kathi Sica (new) Alternate #4 (unexpired Slocum 1/1/21 – 12/31/22).

3. **Roll Call:**

Present – Members Dello Russo, Greenebaum, Kramer, McDowell, Sailliard, Sedlak, Traynor, Slocum, Loeffler and Sica.

Absent – Mr. Reynolds, who was appointed as Alternate #3, was not present to be sworn.

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

4. **Approval of Minutes:**

Review draft minutes of 2/22/22 meeting.

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

Voice vote:

All eligible members voted in the affirmative.

5. **Communications:** Copies of the following document were distributed to the Board:

3/1/22 A. Suriano email re new BOA appointments by Council w/ updated official Borough BOA roster.

6. **Old Business:**

A. Memorialize Resolution #21-08 INCARNATO – Bulk Variances for In-ground Pool w/ Patio & Detached Shed at 7 Oak Place, B: 46, L: 17, Zone: R-2; Approved 2/7/22.

Chair Greenebaum read a draft resolution containing Mr. Brightly's comments on the record. Mr. Brightly suggested an additional amendment regarding the drainage structure leading to Locust Drive, with which the Board concurred. A motion to adopt the resolution as amended was made by Mr. McDowell and seconded by Mr. Traynor.

Roll call vote:

All in favor: Members Greenebaum, McDowell, Sailliard, Sedlak and Traynor.

Those opposed: None. Those abstaining: None.

**B. Memorialize Resolution #21-11 VIGNEAULT** – Bulk Variances for (existing) In-ground Pool at 31 Garibaldi Street, B: 113, L: 10, Zone: R-5; *Approved 2/7/22.*

Chair Greenebaum read a draft resolution containing Mr. Brightly's comments on the record. A motion to adopt the resolution as read was made by Mr. McDowell and seconded by Mr. Traynor.

Roll call vote:

All in favor: Members Greenebaum, McDowell, Sailliard, Sedlak and Traynor.

Those opposed: None. Those abstaining: None.

**C. BOA 2021 Annual Report** – Status update:

Chair Greenebaum concurred with Mr. Mottola's markup of the report. He noted the addition of the observations and recommendations to the Council arising from the Vigneault pool application. Two versions of verbiage for same had been prepared by Mr. Szabo, with the Chair recommending use of the more generic one. Mr. Sedlak commented that the report looks good and concurred that the more generic language should be inserted. A motion to approve the annual report was made by Mr. Slocum and seconded by Ms. Kramer.

Voice vote:

All members voted in the affirmative.

Mr. Mottola will forward copies to the Mayor & Council and the Planning Board.

## **7. New Business:**

**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 2/22/22, adjourned to 3/7/22.*

Appearing on behalf of the application were attorney David Brady, contract purchaser Mads Jepsen, engineer Ron Kennedy with technical facilitator Chris Fairfield, and current property owner Richard Kenworthy, Jr.

Mr. Brady introduced the application stating its purpose is to obtain a Certificate of Nonconforming Use for the subject property. He described the site, its residential surroundings, its contents and its historical use as a construction business. The onsite structures include a house that is used as a residence and office, a masonry garage, a pole barn, a concrete block storage bin, various storage containers, all on a predominantly graveled-over construction yard. He said the lot has been in use for decades, possibly as much as 100 years, the majority of which it was rented and used by Alward Construction, that performed heavy construction jobs. During that time Alward subleased parts of the property to other similar businesses. It is still so rented today. Dates of interest are the years 1932 and 1950, which are when the Borough adopted zoning ordinances that effected this property. He believes it was first zoned residential in 1932 but is not certain what changes were made within the 1950 update. It is his understanding that there was no zoning in the Borough prior to 1932. He emphasized that this is not a site plan or variance application to change the property or establish a new use. He confirmed that the applicant's exhibits, lettered **Exhibit A** through **U**, which will be referenced throughout the hearing, were previously submitted to the Borough and have been posted in the online application folder.

Mr. Jepsen was sworn. He confirmed that he is the contract purchaser of the property and testified to the following: he is familiar with the property based on his first-hand inspections. Utilizing the property survey, **Exhibit A**, he pointed out each of the depicted structures and stated their current uses. **Exhibit C**, a series of photographs of the site, were displayed and explained. **Exhibit D**, an architectural drawing of floor plans of the existing house and masonry garage, was displayed and explained. He is in partnership with his wife and brother to purchase the property. His family is in the business of custom home building and works mostly within a 10 to 15 mile radius of the subject property. The planned continued use of the property is as a construction yard for his business, which is not heavy construction like Alward's. No change is proposed to the historical use of the buildings as a residence, offices and storage. The buildings would be renovated and improved to be reflective of the fine home building the company performs. The lot itself would be cleaned up and better organized. There is an ongoing environmental cleanup of the property, which must be completed before the sale of the property can occur. Both the Jepsens and the seller have employed LSRP's to ensure complete environmental remediation of the site.

Mr. Jepsen's responses to questions from the Board and its professionals:

(Mr. Rago) Initially renovations would be cosmetic in nature; he is aware that any enlargement of facilities in the future would require Board approval.

(Mr. Sedlak) He wishes to reserve the right to lease all or parts of the property in the future to other companies for the same pre-existing use, but there are no immediate plans to do so. He confirmed the existing uses on lots 9 through 12 and lot 6 as single family residential. He did not know the construction date of each of the homes but believes all were preceded by the construction yard.

(Mr. Slocum) Completion of the site remediation is months away but he could not say how many.

(Mr. Szabo) Scandic Builders is the name of his family's construction company, which is owned by him, his wife Sari and brother Kimo. This is the business that would be occupying the site.

(Mr. Brightly) He would replace the existing gate with something more user friendly, safe and secure such as an automatic gate that would also give more privacy to the property. General landscaping and cameras would be added on the property.

Mr. Jepsen's responses to questions from the members of the public:

(Tim Barr, 24 Ann St.) No response was given to a question regarding property values as Mr. Brady objected to its relevance. Mr. Rago explained that the zoning on the lot is not changing and this is not a development application.

(Mark Morrison, 5 Mt. Airy Rd., Basking Ridge) He did not know when the offices were constructed in or onto the residence. It is his understanding that those who have leased the property in the past were all in the construction contracting business. There are currently two lessees. Their trucks are parked nearest the south property line. The yard has been gravel covered but not paved. He was not certain of the use of the office located in the garage/workshop building.

(Lindsay Feeley, 46 Liberty Rd.) His business hours, Monday through Friday, start at 7:30 but end at different times.

Mr. Kennedy was sworn and qualified. Displaying **Exhibit E** he discussed its four aerial photos from years 2020, 2002, 1979 and 1953, which were taken from the website [historicaerials.com](http://historicaerials.com).

The 2020 photo is fairly consistent with the survey. The site is made up of four tracts. Tracts 1 and 2 were purchased by Alwards in 1927; tract 3 was purchased in 1933. The purchase date of tract 4 is unknown but a corrective deed from 1962 was found. The 2020 and 2002 photos are similar in what's depicted on the lot. However, the 1979 and 1953 photos show lesser use of the southern portion of the site, which appears to have been forested. Another aerial photo from 1931 was obtained but was not shown on Exhibit E due to its poor quality. From it, Mr. Kennedy said that only the white graveled area in the middle of the site is discernable. Ann Street does not yet exist. A few houses could be seen along Mt. Airy Rd. The foregoing is representative of currently available information from published sources. He is personally familiar with the site over the past 45 years as he lives in the area and has been on the site, having been involved with civil infrastructure projects that were contracted from the site. He had never been in the house or the attached offices, having always met with the contractor in the yard. He noted materials and equipment he observed the times he was there. **Exhibit B** was displayed to show the existing site layout and a future, cleaned up site layout that reflects the Jepsens intentions for the lot, should they acquire it. All existing structures, except the residence/office and masonry garage buildings would be removed from the site, which would remain as a predominately open graveled lot.

Mr. Kennedy's responses to questions from the Board and its professionals:

(Mr. Slocum) He finds the website *historicaerials.com* to be an accurate and reliable source of information as his office uses it daily. He has used it for the past 10 to 15 years. Prior to the internet, the images could be obtained from a clearing house in Dallas, TX. A live website image from *historicaerials.com* showing the 1931 image referenced earlier was displayed and described.

(Mr. Rago asked that a screen shot of the webpage be made and forwarded to Mr. Mottola as **Exhibit A-1**). He had no information on surrounding property owners in 1931.

(Mr. Sedlak) He did not know the month the 1979 aerial photo on **Exhibit E** was taken, but probably in the winter as there are no leaves on the trees. He did not know when the trees apparent in the 1979 photo were removed, or when removal permits were required, as those are clearly no longer evident in the 2002 or 2020 photos.

(Ms. Kramer) The impervious coverage that is existing is common for lots developed many years ago.

Mr. Kennedy's responses to questions from the members of the public:

(Mark Morrison, 5 Mt. Airy Rd., Basking Ridge) The trees on the 1953 photo on **Exhibit E** would not be considered a conforming use, trees are not a use. The whole site is a construction yard with the same use. Everything on the site is a nonconforming use in the R-4 zone except for the residence. He cannot tell from the images that whether equipment or materials were stored under the trees existing in the two earlier photos, but obviously, trees were removed. From **Exhibit B**, he estimates between 80% and 90% of the lot is gravel covered in both images, which is high for a residential zone. There is no intent to increase the coverage from the existing in the future.

(Tim Barr, 24 Ann St.) It can't be concluded whether there is gravel covering the site in all of the photos or if it was once compacted dirt.

(Michael Vinegra, 14 Sterling Rd.) The ongoing environmental cleanup would not necessarily change the amount of impervious coverage on the site.

Mr. Kenworthy was sworn and testified that as one of the current owners he is familiar with the property. He started working there full time in 1972 and before that worked part time in the summers. His family has a history with the Alward family. He understands the site was originally owned by the Ferrante Company which had multiple construction quarries and companies in the 1890's. It sold the property to masonry contractor Henry Alward in 1927. The company eventually got into heavy site civil and infrastructure construction. His father went to work for Mr. Alward in the 1940's. He bought the business from him Mr. Alward when he retired in 1968. Mr. Kenworthy and his brother bought the business from their father when he retired in 1988. On site activities included storage of construction materials and equipment, equipment maintenance, materials deliveries. Different people that worked for the company resided in the house. To his knowledge, the offices attached to the house have always been there, back to the 1920's. Someone had been living in the house to the end of December 2021. He goes to and uses the offices daily. The masonry building in the back was used as an equipment repair and maintenance shop and for construction materials storage. The pole barn was used for storing smaller equipment such as compressors, generators, light towers, etc. Additional trailers were kept on site and also used for materials and equipment storage. Masonry bins were used for storage of different types of aggregates. Larger construction equipment such as dump trucks, flatbed trucks, dozers were sometimes stored on the site. Other such equipment came in for repairs and maintenance and then left the site. Four or five employees worked in the shop. The business was there for 90 years under Alward-Kenworthy control. During that time and still today other heavy construction contractors and subcontractors are tenants on the lot. Currently there are two, one is a landscape contractor. **Exhibit F** was displayed, which consists of a poster indicating the 75<sup>th</sup> anniversary of the H. W. Alward company, founded in 1927, occurred in 2002. **Exhibit G** was displayed. It was a photograph of a Highway & Public Utilities General Contractor license granted to H.W. Alward, Inc. by the state of North Carolina on 2/9/49. **Exhibit H**, a newspaper article from 10/18/68, was displayed. The article stated that Henry Alward, who founded the company 40 years ago, was selling it to Richard W. Kenworthy, the former general superintendent of the firm. It also quotes Mr. Kenworthy as saying he plans no drastic changes to the heavy construction business carried on by the firm during its entire history at 161 Mt. Airy Rd. **Exhibit I**, a 1988 newspaper article that states the business has been at its Bernardsville location since 1927, was displayed and partially read into the record. The following exhibits were also displayed and explained:

**Exhibit J** – Bernardsville Notice of Violation dated 8/24/18.

**Exhibit R** – Copy of undated black & white photo of wheeled shovel on the subject property.

**Exhibit S** – Circa 1930's copy of black & white photo of a road grader behind the house on the subject property.

**Exhibit T** – Copy of circa 1950's black & white photo of site taken from the second floor of the residence toward Pill Hill Rd.

**Exhibit U** – Copy of envelope postmarked 11/23/38 addressed to Henry Alward at Mt. Airy Road.

Mr. Kenworthy testified that the use of the property has not changed from when it was first established, including that of the house and the offices.

Mr. Kenworthy's responses to questions from the Board and its professionals:

(Mr. Greenebaum) The structures pictured in **Exhibit R** are the currently existing house and workshop that have remained unchanged since the photo was taken.

(Mr. Slocum) To his knowledge the Alwards did not own other properties in Bernardsville. He did not recall the removal of the trees at the south end of the property between 1979 and 2002.

(Mr. Sedlak) He did not know when the house was built but supposes it was circa 1927 when Mr. Alward bought the property because it was his home and office. He did not know when Mr. Alward moved out of the house. In later years the house (only) was occupied by employees of the company.

(Ms. Kramer) He believes the offices were constructed at the same time as the house.

(Mr. Rago) He does not know if the lot was used within the forested area depicted in the 1979 aerial photo. He acknowledged the ongoing status of the environmental cleanup but could not say when it would be completed.

Mr. Kenworthy's responses to questions from the members of the public:

(Roy Crego, 12 Mt. Airy Rd., Basking Ridge) He hasn't any photos of the intersection of West Oak and Mt. Airy Roads.

(Mark Morrison, 5 Mt. Airy Rd., Basking Ridge) To his knowledge the attached offices were built at the same time as the residence. Regular fire inspections have been performed yearly. The small office in the masonry garage was used for the shop manager. The company is not currently bidding projects but is active with rentals and the site cleanup. The company has not been shut down.

Given the hour, Chair Greenebaum paused the hearing and announced, with the agreement of the applicant, it would be continued at the April 4<sup>th</sup> meeting without further notice to the public.

**B. Review 3/7/22 Bills List with Vouchers:**

Upon review, a motion to pay the listed invoices, in the amount of **\$1,012.50**, was made by Mr. Slocum and seconded by McDowell.

Roll call vote:

All members voted in the affirmative.

**8. Pending Applications:** The Chair noted the following application and its status:

*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; Deemed complete 2/17/22; Scheduled to be heard 4/18/22.*

**9. Comments from Members:**

Chair Greenebaum commented that the draft resolution prepared by Mr. Mottola was acceptable and that a similar one should be prepared for Mr. Carton with the appropriate dates inserted. Both should be distributed for adoption at the next meeting. Mr. Carton's signature should not be sought for Mr. English's resolution and vice versa.

**10. Comments from Staff:**

Mr. Rago began updating the Board on the status of the NJAW appeal litigation when it was decided that the matter should be discussed in executive session.

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

At the Chair's request, a motion to close the public meeting and reconvene in executive session was made at 10:58 pm by Mr. Slocum and seconded by Mr. McDowell.

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.

A motion to close the executive session and reopen the meeting to the public was made at 11:10 pm by Mr. McDowell and seconded by Mr. Slocum.

Voice vote: All members voted in the affirmative.

**12. Adjournment:**

Motion to adjourn: Mr. McDowell.

Second: Mr. Slocum.

Chair Greenebaum adjourned the meeting at 11:15 pm.

Respectfully submitted,



Frank Mottola,  
Planning & Zoning Boards  
Administrative Officer

Keywords: Oaths-Incarnato-Vigneault-Jepsen-Brady-Kennedy-Kenworthy-Alward-Mt.-Airy.