

BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
**Minutes – May 7, 2018**  
PUBLIC MEETING – 7:30 pm

- 1. Statement of Adequate Meeting Notice:** Read by Chairman Greenebaum.
- 2. Flag Salute:** All present participated in the Pledge of Allegiance.
- 3. Roll Call:**  
Present: Members Greenebaum, English, Dello Russo, Sailliard, Carton, Traynor and McDowell.  
Absent: Members Kramer, Sedlak & Otteau.  
Board professionals present: Messrs. Rago, Szabo and Brightly.
- 4. Approval of Minutes:** The Board reviewed the meeting minutes of 3/19/18.  
Motion to approve the minutes as presented: Mr. McDowell. Second: Mr. Sailliard.  
Voice vote:  
All eligible members voted in the affirmative.
- 5. Communications:** Copies of *The New Jersey Planner*, March/April 2018 edition, were distributed to the Board. Chairman Greenebaum asked Mr. Szabo to provide the Board footnotes on the Jacobson affordable housing decision that was reported in the issue. He also commented on the Verizon v East Brunswick Zoning Board article that also appeared, citing that Board's denial of an antenna application being upheld on appeal.
- 6. Old Business:**
  - A. Memorialize resolution #18-02 Fitzpatrick:** Bulk Variances for Detached Garage 44 Highview Avenue, B: 53, L: 13, Zone: R-4; Approved 4/16/18.  
Chairman Greenebaum read the resolution on the record. Several typographical/grammatical errors were noted for correction.  
Motion to adopt the resolution as corrected: Mr. Dello Russo. Second: Mr. Carton.  
Roll call vote:  
All in favor: Greenebaum, English, Dello Russo, Sailliard, Carton & Traynor.  
Those opposed: None.
  - B. Continued Application #18-03 – Stephen & Emma Horsfield:** Bulk variances for existing shed 16 Garibaldi Street, B: 112, L: 1.03, Z: R-5; Deemed complete & hearing commenced on 4/2/18.  
*(As he owns property within 200' of the applicants', Mr. Dello Russo was recused from hearing this application.)*  
  
Appearing again for the application were owners/residents Stephen and Emma Horsfield. Before carrying this application to tonight's meeting from the prior hearing, the Board had asked the applicants to confirm the location of the dry well, research its maintenance obligations and determine whether there is an alternate location for placing the shed on the lot. Mr. Horsfield confirmed that the dry well is partially located beneath the front right (southwest) corner of the

shed. He said that they were not provided a dry well operations and maintenance manual by their lot developer, Sam Maddaluna. Mr. Horsfield proposed installing a hatch in the floor of the shed to access an 18" x 18' metal yard grate to maintain the dry well. He does not think installing the access hatch will compromise the structural integrity of the shed. Referring to the partial site development plan attached to his report, Mr. Brightly said the 18" x 18" grate is a yard inlet/over flow grate and not a direct access port for maintaining the dry well. He said there should be a capped PVC inspection riser coming up from the dry well to grade. Mr. Horsfield said it must be buried because no such appurtenance is visible on their property. Chairman Greenebaum recommended that any approval be conditioned on the applicants contacting Mr. Maddaluna to find out the location of the dry well inspection port and obtain a copy of the dry well Operation and Maintenance manual. If the inspection port is also located under the shed, an additional hatch would have to be added to access it as well as the yard grate. Mr. Brightly noted that the storm water management obligation that was recorded in the original subdivision deed but was not carried onto the deed for this property. Mr. Szabo suggested the applicants may have recourse with their title company for failing to pick up on the stormwater facility maintenance restriction in the subdivision deed. Mr. Traynor added that any approval should contain language stating that the homeowners' obligation for maintaining the dry well is not waived as a result of an approval by the Board. Chairman Greenebaum agreed and added that any approval should also be conditioned upon the dry well maintenance restriction being recorded on the applicant's deed.

There were no questions or comments from the public.

A motion to approve the setback variances requested in the application and as conditioned above was made by Mr. Sailliard and seconded by Mr. Traynor.

Roll call vote:

All in favor: Members Greenebaum, English, Sailliard and Traynor.

Those opposed: None.

## **7. New Business:**

**A. Application #18-04 – Richard & Kelly Thoma:** Bulk variances for existing shed 38 Bernards Avenue, B: 112, L:1.02; Zone: R-5; Received 2/7/18; Deemed technically incomplete but recommended for hearing with waivers 3/26/18.

*(As he owns property within 200' of the applicants', Mr. Dello Russo was recused from hearing this application.)*

Appearing for the application were owners/residents Richard and Kelly Thoma, both of whom were sworn by Mr. Rago. They stated that this application is for variance relief for deficient side and rear yard setbacks for a detached 8' x 12' shed they placed in their rear yard in 2016. The shed currently has a 2.0' rear yard setback and a 5./1' side yard setback where 7' is required for each. They determined what they thought was the best location for the shed by discussing it with their immediate neighbors, the Horsfields, consulting their builder and by observing where other sheds in the neighborhood have been placed, some right on the property line. The nonconforming shed was observed by a Borough official while performing a fence inspection, which resulted in the issuance of a violation notice. The 50' lot width and prior construction of a permitted/conforming deck in the rear yard limited suitable rear yard locations for placing the shed. Ms. Thoma cited the Historic Preservation Committee's report stating the historical appropriateness for the neighborhood of the shed's rear yard location. Referring to two photographs they took, one of which was included with the application and another that was not,

and marked as **Exhibit A1**, she explained how the shed's exterior finishes match the house and how **A1** shows the nonconforming locations of other sheds in the neighborhood. Mr. Brightly

confirmed that the shed does not interfere with the Thomas' stormwater drainage structures. Ms. Thoma said there was an addendum to their purchase contract that contained a requirement for them to obtain a drywell Operation and Maintenance Manual from the Borough. However, it was established that their property deed does not contain the required drywell maintenance restriction language that is in the original division deed. Mr. Brightly pointed out that although the amount of the impervious coverage on the lot remains conforming, even counting the shed, the original design calculation for the dry well did not include the shed. And while the current size of the dry well is probably adequate, the applicant's deed should be modified to add the maintenance and reporting requirement. Upon inquiry by Mr. Carton, Mr. Brightly could not confirm whether site development drawings submitted to the building department shows the trench drain connected to the dry well, because on the survey submitted by the applicants, that is not shown. Chairman Greenebaum recommended that any approval be conditioned upon the applicants having the standard dry well maintenance restriction added to their deed.

There were no questions or comments from the public.

A motion to approve the setback variances requested in the application, subject to the Chairman's recommended condition, was made by Mr. McDowell and seconded by Mr. Traynor.

Roll call vote:

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

Those opposed: None.

**B. Review for payment 5/7/18 Bills List with Vouchers:**

Motion to pay bills in the amount of \$7,014.25: Mr. McDowell. Second: Mr. Dello Russo.

Roll call vote:

All members voted in the affirmative, except members Dello Russo, Carton and Traynor, who abstained.

- 8. Pending Applications:** The Board acknowledged the one withdrawn and two pending applications listed on the agenda as well as their anticipated hearing dates.

**9. Executive Session: Discussion of personnel matters and the matter of ongoing litigation.**

Chairman Greenebaum read the closed session resolution on the record. Motion to close the public meeting and reconvene in executive session: Mr. McDowell.

Second: Mr. Traynor.

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. McDowell.

Second: Mr. Sailliard.

Voice vote: All members voted in the affirmative.

- 10. Comments from Members:** Chairman Greenebaum reminded members who had not yet done so to complete their online financial disclosure statements.

**11. Comments from Staff:** None.

**12. Adjournment:**

A motion to adjourn was made by Mr. McDowell. Second: Mr. English.

Voice vote: All members voted in the affirmative.

Chairman Greenebaum adjourned the meeting at 10:07 pm.

Respectfully submitted,

Frank Mottola, Planning & Zoning  
Boards Administrative Officer

Keywords: Horsfield-Garibaldi-Thoma-Bernards-shed-drywell-drainage-deed-litigation.