

**BOARD OF ADJUSTMENT**  
**BOROUGH OF BERNARDSVILLE**  
**Minutes – May 21, 2018**  
**PUBLIC MEETING**

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, Kramer, Carton and Traynor.  
Absent: Members Sedlak and McDowell.  
Board professionals present: Messrs. Rago, Szabo and Brightly.
4. **Approval of Minutes:** Review of 5/7/18 meeting minutes.  
Motion to approve the minutes as presented: Mr. Sailliard. Second: Mr. English.  
Voice vote:  
All eligible members voted in the affirmative.
5. **Communications:** 5/18/18 Amanda Wolfe, Esq. email re DEP required mandatory stormwater training for Board/Council members with corresponding excerpted article from Jan/Feb NJ Planner.  
Chairman Greenebaum explained the DEP mandated stormwater training for Land Use Board and Council members that must be completed by July 1, 2018. Members were directed to view the approximately 45 minute online training video titled "Asking the Right Questions in Stormwater Review" posted on the DEP website (link provided) and report when they had completed the training to the Board Secretary via email.
6. **Old Business:** None.
7. **New Business:**
  - A. Application #18-07 – Claremont Commons - 126: Use & bulk variances for new two-family residence at 126 Claremont Road; B: 37, L: 12, Zone: B-1.  
Deemed complete 4/18/18, Decision required by 8/16/18.  
  
Appearing on behalf of the application were attorney Susan Rubright, Claremont Commons LLC principal Joseph Rossi, engineer Stephen Parker, architect Douglas Asral and planner/landscape architect John Leon Cavallo. Mr. Dello Russo was recused from hearing this application and left the dais.  
  
Applicant introduced exhibits:
    - A-1 Sketch plan of 126 and 124 Claremont Road sites, Sheet 1 of 1, by Parker Engineering & Surveying P.C., dated 2/1/18.
    - A-2 Colored perspective rendering of front of townhouses, untitled and undated, by Asral Architect.
    - A-3 8.5" x 11" Street view photo of northwest adjacent lot at 128 Claremont Rd., B:37, L:11.

Ms. Rubright stated that she is representing both this and following application, #18-06, owned by Anthony Dello Russo. The lots involved in these two applications were previously combined and granted approval for a four unit townhouse development under 2016 Board of Adjustment

application #16-09 - Claremont Commons, LLC, which was never constructed. The two lots are now being developed separately by different owners. Each is an application for a two townhouse building with front yard parking and separate driveways. The same design and planning consultants were used for both applications and much of the testimony for the first application (#18-07) will be incorporated by referenced for the second (#18-06). Ms. Rubright listed the uses allowed in the B-1 zone obviating the need for use variances for each as solely residential developments are not among the uses permitted in the zone.

For application #18-07 the variances/waivers being sought in addition to the use variance include a D6 height variance (3 stories, 34.9' proposed – 2.5 stories, 30' allowed), side yard setback variances (5' one side, 12.4' combined proposed – 10' one side, 20' combined required), rear yard setback variance (10' proposed – 20' required); driveway setback waiver (1.5' proposed – 5' required)

Mr. Parker was sworn and qualified. He was the engineer for prior approved application #16-09 and is the engineer for each of the applications before the Board tonight. Referring to exhibit **A-1**, Mr. Parker described the site layout with front yard driveways/parking areas. The plan provides for on site parking and turning areas with an additional garage parking space for each unit. The existing stormwater drainage pattern (from back to front - toward Claremont Rd.) will be continued on both lots and will be supplemented with dry wells as called for in Mr. Brightly's 5/7/18 report. No site lighting is proposed, only building mounted lights. Typical residential landscaping is proposed although no landscape plans were submitted with the application. All utility connections will be from existing services in Claremont Rd. Trash/recycling containers will be stored in the garages and brought out only for collection.

Mr. Parker said there is nothing the applicant objects to in Mr. Brightly's report but some items require discussion. The applicants did not find Mr. Brightly's suggestion for a shared driveway acceptable. The deficient side yard setbacks for the driveway and the pavement area proposed are needed to accommodate the on site parking requirements and turn around areas so vehicles do not have to back out onto Claremont Rd. Mr. Brightly and the Board recommended that the turnaround areas be narrowed to 10' wide, with removal of the unusable pavement closer to the building. Mr. Parker will work with Mr. Brightly on revising the driveways. Mr. Parker agreed with Mr. Carton's suggestion that a trench drain be installed across the driveways near the front property line. Citing Historic Preservation and Environmental Commission comments, Mr. Carton recommended there be a change of driveway pavement materials to soften the appearance of so much pavement the front yards. Ms. Rubright said this would be added to the plans. It was agreed that a landscape plan and revised driveway layout plan will be submitted for the Board's review at a subsequent meeting.

#### Questions from the public:

Otto Pfaendtner, 47 Mine Mount Rd.: whether stormwater runoff would go onto his property; number of garages and parking spaces in front of buildings.

Mr. Asral was sworn and qualified. Mr. Asral said that he was the architect for the prior approved 2-lot application. Exhibit **A-2** was marked and displayed. It depicts the nature and expression of the materials to be used on the townhouse exteriors, which are a combination of natural looking finish materials including stucco, shingle, brick and stone. The image depicted in **A-2** was characterized as being closer to the design of the two-family at 124 Claremont for Mr. Dello Russo, but is also similar to what will be built at 126 Claremont for Mr. Rossi. The proposed building designs are shown in greater detail on the architectural drawings submitted with the application. HVAC equipment will be located at grade behind the buildings and not on flat roofs as in the prior

application. There will be two A/C condensers per dwelling unit. Each unit will have two bedrooms and 2.5 bathrooms. The proposed building height of 34.9' requires a variance to exceed the allowable 30', which is partly due to providing 9' high interior ceilings. It was determined that there were three different issue dates of architectural plans submitted for the application: the first dated 1/31/18 (initial application), 3/5/18 (revised for Board professionals) and 5/16/18 (for Board members/hearing). The difference in the latter two sets is the removal of the flat roof and placement of HVAC units at grade. Mr. Brightly pointed out that there is a discrepancy in the information presented regarding measurement of building height. Ms. Rubright stipulated that the building height will not exceed 34.9', which is the height approved for the prior application.

There were no questions from the public for Mr. Asral.

Mr. Leon Cavallo was sworn and qualified. He said he is substituting for John McDonough, who was the planner for the prior application. He attested that he visited the site and reviewed the master plan, zoning ordinance, application drawings and resolution for the prior approval. Mr. Leon Cavallo presented the justifications by which the Board can grant the **d1** use, **d6** height and **c2** dimensional variances requested:

**d1:** the application meets all of the Medici criteria of site suitability; advancing the "special reasons" purposes A, G and N of the MLUL; no substantial detriment to the public good, no substantial impact to the integrity zoning ordinance or zone plan.

**d6:** purposes of the height limit are not violated to a significant extent; the added height gives a better interior and exterior architectural aesthetic; not out of character with the neighborhood, better alternative, not discernable from the outside, does not create any negative impacts,

**c2:** three stories are compatible with the neighborhood and zone; benefits outweigh the detriments.

**c2:** deficient driveway setbacks are mitigated by providing K-turns, landscaping, decorative pavement materials and reducing the amount of pavement.

Exhibit **A-3** was marked and copies distributed. It is a photo of the existing two-family dwelling on the site adjacent to 126 Claremont and was taken by 126 owner/applicant Joseph Rossi earlier today. Mr. Leon Cavallo said that the next site beyond the pictured duplex is developed with a three story, 35 unit multi-family building. Also nearby on Claremont Rd. are a number of single family residences. All of which attest to the suitability of the proposed townhouses in the neighborhood. Mr. Szabo questioned the planner on the front yard location of the driveway and Chairman Greenebaum on the height transition from the 1½ or 2 story duplex shown in **A-3** next to the proposed 3 story townhouse. Mr. English commented that he did not find the proposed development compatible with the neighborhood and finds the front driveway unsafe. Mr. Parker conceded that at times it may be necessary to back out onto Claremont Rd. from the driveway depending on how many cars are parked there. He will prepare a drawing showing the revised driveway layout with a superimposed turning diagram.

Questions from the public for Mr. Leon Cavallo:

Stephen Reynolds, 27 Stevens St.: the viability of townhome sales in this location, from a planning perspective.

Otto Pfaendtner, 47 Mine Mount Rd.: whether 126 and 124 Claremont sites will both be developed simultaneously.

Ms. Rubright summarized the application and asked the Board for approval.

Public comments:

Johanna Wissinger, Environmental Commission: The Commission has concerns about site contamination from prior on-site operations, she presented photos of site conditions and asked that the site have an environmental assessment. Mr. Parker responded that an environmental testing company had tested the site for the prior application and found no contamination. If debris or contamination is encountered during construction it would have to be properly removed. Mr. Rossi said that a Phase I assessment had been done for the prior application and would be provided for the Board and Environmental Commission.

Mr. Rago summarized the Board's reasons for approving application #16-09 and listed the conditions that would be attached to an approval of this application based on the foregoing testimony, which included replacing the fronting sidewalk, replacing any existing utility connections if needed, compliance with the engineer's review letter, reduction and reconfiguration of the front driveway to provide for on site turn arounds, variation of paving materials, a trench drain across the driveway if possible, revised grading in consultation with Mr. Brightly, submittal of a landscaping plan that includes foundation plantings and ornamental trees for the Board's review, maximum mean roof height of 34.9', and submittal of the Phase I environmental assessment.

The Board discussed the application to give the applicant a sense of its opinion and whether approval may be likely pending submittal of certain requested information. Generally, all members indicated their conditional, if not full support for the application. A motion authorizing Mr. Rago to prepare a draft resolution in favor of the application, to be voted on and memorialized at a future meeting, was made by Ms. Kramer and seconded by Mr. Carton.

Voice vote:

All members voted in the affirmative.

**B. Application #18-06 – Claremont Commons -124:** Use & bulk variances for new two-family residence at 124 Claremont Road; B: 37, L: 13, Zone: B-1.  
Deemed complete 4/18/18, Decision required by 8/16/18.

Appearing on behalf of the application were attorney Susan Rubright, Claremont Commons LLC principal Joseph Rossi, engineer Stephen Parker, architect Douglas Asral and planner/landscape architect John Leon Cavallo. Mr. Dello Russo was recused from hearing this application and left the dais.

Applicant introduced exhibits:

- A-1** Sketch plan of 126 and 124 Claremont Road sites, Sheet 1 of 1, by Parker Engineering & Surveying P.C., dated 2/1/18.
- A-2** Colored perspective rendering of front of townhouses, untitled and undated, by Asral Architect.
- A-3** 8.5" x 11" Street view photo of northwest adjacent lot at 128 Claremont Rd., B:37, L:11.

Ms. Rubright introduced the application stating that the subject site is adjacent to that for the 126 Claremont Rd. application just presented and is owned by Anthony Dello Russo. The same professional consultants were used for this application and since it is essentially the same as the prior application she intends to point out the differences from the prior application and incorporate by reference the consultants' prior testimony that also applies to this application. The three prior exhibits also apply.

Mr. Parker was sworn and testified that with the exception of lot size, slightly different setbacks and lot coverage, the application is essentially the same as for 126 Claremont. The same **d1**(use) and **d6** (height) variances apply. As the building sits differently on a different sized/shaped lot, bulk variances/waivers are different as follows: side yard setback variances (5' one side, 10' combined proposed – 10' one side, 20' combined required), rear yard setback variance (17' proposed – 20' required); driveway setback waiver (1.0' proposed – 5' required). Mr. Parker stipulated to the same testimony as for the 126 application, including reconfiguring the driveway to improve maneuverability and to reduce and vary pavement materials. Dry well and trench drain stormwater structures will be added, rear yard grading will be discussed with Mr. Brightly and a landscape plan will also be submitted for this site. Chairman Greenebaum requested that a car movement diagram be added to the revised driveway drawing to illustrate how it is supposed to work.

There were no questions from the public for Mr. Parker.

Mr. Asral was sworn and testified that he is the architect for this, the 126 application and the previously approved #16-09. There are only subtle differences from the 126 application, which include variations in the location and amount of building finish materials and variations in the shapes of the roofs. The exterior color palate will be similar to 126 and floor plans are identical. Mr. Asral stipulated that his testimony for 126 Claremont otherwise applies to this application.

There were no questions from the public for Mr. Asral.

Mr. Leon Cavallo was sworn and testified that from a planning standpoint, other than the slight numerical differences in the dimensional variances, his prior testimony for 126 Claremont is equally applicable to this application.

There were no questions from the public for Mr. Leon Cavallo.

Chairman Greenebaum reiterated that the inconsistencies between the site plans and building plans regarding the building height calculations must be resolved the same as for the 126 application. Ms. Rubright again stipulated that the building height measurement as defined in the ordinance will not exceed 34.9'. Mr. Rago stated that all of the restrictions/conditions listed for 126 Claremont appear to apply to this application as well. Ms. Rubright concluded testimony for the application.

There were no public comments on this application.

Upon discussion, the Board indicated it generally supports the application. A motion authorizing Mr. Rago to prepare a draft resolution in favor of the application, to be voted on and memorialized at a future meeting, was made by Mr. English and seconded by Mr. Carton.

Voice vote:

All members voted in the affirmative.

**8. Pending Applications:** None.

**9. Executive Session:** Matter of ongoing litigation: Bernardsville Petroleum Group, LLC.

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

Second: Mr. English.

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. Sailliard.

Second: Mr. English.

Voice vote: All members voted in the affirmative.

**10. Comments from Members:** None.

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

**12. Adjournment:**

Motion to adjourn: Mr. Sailliard. Second: Mr. English.

Voice vote:

All members voted in the affirmative.

Chairman Greenebaum adjourned the meeting at 11:27 pm.

Respectfully submitted,

Frank Mottola, Planning & Zoning  
Boards Administrative Officer

Keywords: Claremont-Commons-Dello-Russo-Rossi-Rubright-Parker-Asral-Cavallo-litigation.