

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – November 5, 2018
PUBLIC MEETING
7:30 PM

- 1. Statement of Adequate Meeting Notice:** Read by Vice Chair English.
- 2. Flag Salute:** All present participated in the Pledge of Allegiance.
- 3. New and Elevated Members' Oaths of Office - Administered by Board Attorney Rago:**
Thomas Carton from Alt. 1 to Full Member – (unexpired Giglio) 1/17 ~ 12/20.
Rich Traynor from Alt. 2 to Alt. 1 – (unexpired Carton) 1/18 ~ 12/19.
Edward McDowell from Alt 3 to Alt 2 – (unexpired Traynor) 1/17 ~ 12/18.
David Yale new Alt. 3 – (unexpired McDowell) 1/18 ~ 12/19.
- 4. Roll Call:**
Present: Members English, Dello Russo, Sailliard, Kramer, Carton, Traynor, McDowell and Yale.
Absent: Members Greenebaum and Sedlak.
Board professionals present: Attorney Rago, Planner Szabo and Engineer Brightly.
- 5. Approval of Minutes:** None.
- 6. Communications:** Copies of the 10/22/18 updated Board of Adjustment Roster were distributed.
- 7. Old Business:** Continued Application #18-08 CLAREMONT MANOR - Preliminary & Final Multi-Family Major Site Plan w/ Use & Dimensional Variances for New 23 Unit Condominium Building w/ enclosed parking at 24-26 Claremont Road., B:75 L:6; Zone: B-1; Previously heard 9/17 & 10/15/18; Decision required by 12/6/18.
(This application was heard after application #18-09 listed below under New Business)
Mr. Bisogno reintroduced the application and called architect David Minno to resume testimony, still under oath from his prior appearance.

Exhibits introduced:
A7 11/5/18 8.5" x 11" Color reprints of slide presentation by Minno-Wasko, 32 pp.

Mr. Minno testified to the following, either directly or in response to questions from the Board, its professionals and/or the public: Changes have been made to the building since the last meeting. The parking arrangement has been reconfigured so that all of the visitor parking spaces will be on the upper level that is accessed from Essex Ave. The interior dividing wall has been removed on this level to improve circulation. The total number of parking spaces remains unchanged. Each dwelling unit will be assigned one space and the rest will be free floating, together with the visitor parking. Roll up garage doors will be used at both ingress and egress lanes that can be operated by key fob or from the residences above. There will also be a call box for visitors. The doors will be inset about

18' from the face of the building and about 30' from the curb. There will be no doors at the Claremont Rd. parking level ingress/egress lanes. **A-7** plans and 3D images were presented of typical club room, exercise room and secure deliver room amenities that will be located on the first residential floor above the parking. By removing the rooftop deck and trellis the elevator no longer needs to serve the roof. Accordingly, the building height has been lowered to 56', measured from average grade to the top of the now lowered elevator shaft roof. Additional images in **A-7** included: Illustrative floor plans and photographs typical of upscale residential units of the type proposed; building section drawings cut through adjacent streets and neighboring properties, some showing 6' high privacy fencing and buffer plantings along common property line with neighbors; new building elevation drawings showing decorative features added to east and south facades; computer generated images of the building from various surrounding view points, including neighbors' yards; aerial photos of the existing site. Mr. Minno showed three computer generated fly-around videos from different view points. He stated the applicant's offer to plant additional landscape screening on adjacent neighbors' properties at no cost to the neighbors, and with two-years of free maintenance included. The proposed average apartment size is 1,900 S.F. If that is reduced to an average of 1,400 S.F. to 1,500 S.F., the developer would not be able to offer the same top of the line amenities or quality of materials currently envisioned. The same would result if one floor of the building were to be eliminated. In reviewing Mr. Brightly's 10/26/18 report comments, Mr. Minno stated that corrections have already or will be made to the drawings and revised drawings will be submitted. Trash disposal and pickup operations were explained as a combination of building management and private hauler duties. Lighting fixtures in the parking levels will be hidden within the overhead structural beams and not visible from the outside. There will be a single exhaust vent from each of the two parking levels to the outside. They will be located on side walls above head height.

Vice Chair English requested the applicant provide views, at a future meeting, of the building from the train station side of route 202. Mr. Szabo requested marketing data be provided that shows smaller sized dwelling units would not economically support the types of amenities currently proposed. Mr. Minno stated that relative to its height and size the building will change Bernardsville and be transformative to its skyline. The projected age range of prospective buyers is 55 to 75, but ownership will not be age restricted. His characterization of the building as a rich downtown building refers to the quality of the building materials used and their classic detailing that give an historic flavor. Parking spaces will be 9' x 18' per RSIS standards. The elevator cab size will be large enough to accommodate a fully horizontal gurney and two EMT personnel. An emergency generator, that has yet to be designed, will probably be located on the roof and be screened. The roof will be light reflective but not a "green roof". He deferred to the owners' structural engineer as to whether blasting would need to be utilized, to the civil engineer as to whether the side walks will be replaced and to the landscape architect regarding shading from proposed landscape plantings. He did not know how many apartments would have windows with views into adjacent neighbors' yards, but said he would find out. Absolute building height measurements (as opposed to the ordinance compliance calculation) from the corner of Claremont and Essex, the lowest point around the building, were given as: 68'-3 3/4" to the elevator shaft roof; 65'-8 3/8" to top of building parapet and 63'-2 3/8" to the roof surface. Fire Chief Glenn Miller stated the limits of fire equipment available to the BFD relative to the height of the proposed building. He was informed that the proposed building will be constructed of Class 2 noncombustible materials and will have a NFPA 13 sprinkler system. Mr. Minno said that requests from the public for additional computer generated views of the proposed development would have to be considered by his client as they are time consuming and expensive to produce.

Board members and professionals that questioned Mr. Minno: Vice Chair English, Ms. Kramer, Mr. McDowell, Mr. Traynor, Mr. Carton, Mr. Szabo and Mr. Brightly.

Members of the public that questioned Mr. Minno: Jeffrey Horowitz, 11 Laurel Ln.; Kristi MacDonald, 59 Anderson Hill Rd.; Craig Calwhite, 24 Essex Ave.; Steve Reynolds, 27 Stevens St.; Fire Chief Glenn Miller; Roberto Mendosa, 14 Stevens St.; Joan Calwhite, 24 Essex Ave.; Jeff Hammonds, Flint Lock Ct.; Mike Stevens, 12 Woodland Rd.; Barb Spengler, 3 Somerset Ave.; Janeene Chrisbacher, 12 Somerset Ave.; Samantha Hagen, 13 Somerset Ave.; Johanna Wissinger, member Environmental Commission;

The applicant's testimony was concluded for the night at 10:24 pm and it was announced that the hearing is to be continued at the December 3rd meeting without further notice to the public.

8. New Business:

A. Application #18-09 MIKAEL SALOVAARA – Dimensional variance for addition to solar panel array in front yard; 170 Dryden Road, B: 2, L: 7, Zone: R-1-10; Deemed substantially complete 9/19/18.

Appearing on behalf of the application were attorney Andrew Brewer, owner Mikael Salovaara and engineer Eric Keller. Mr. Salovaara and Mr. Keller were both sworn and Mr. Keller was qualified in his field of expertise.

Mr. Brewer explained that because the mailing date on the certified mail receipts were hand written (by his secretary) rather than date stamped by the post office, he certified as an attorney that the 200' notices were sent via certified and regular mail on October 16, 2018. The owner seeks a variance to place an additional, third solar panel array next to two existing arrays, located in the front yard of his property, which were permitted to be constructed by a variance obtained in 2008. The variance sought, as in 2008, allows placement of an accessory structure in the front yard of a residential property. Mr. Brewer confirmed with Mr. Rago and Mr. Szabo that the 2008 resolution for the original solar panels incorrectly stated that a "d" variance was approved instead of a "c" variance, which Mr. Szabo explained is the requirement in both cases. Accordingly, Mr. Brewer verbally amended the application to request "c1" and/or "c2" variance relief instead of a "d" variance.

Regarding completeness of the application, Mr. Keller addressed the twelve waiver items listed in Mr. Szabo's 9/19/18 completeness and planning report. The applicant stipulated that as a condition of approval, items 1, 6 and 12 would be added to the drawings and/or provided. Waivers were requested and, upon deliberation by the Board and its professionals, granted for the remaining nine items.

Mr. Salovaara testified to the following, either directly or in response to questions from the Board and/or its professionals: He has been a Bernardsville resident for 25 years and was the applicant in 2008 for the existing solar panels. These panels provide electrical power for the house but not enough for the entire house. He wishes to add additional capacity to more fully power the house and take advantage of the collapse in price of solar panels, which provide a renewable source of energy. The panels are located in an area having a lower elevation than Dryden Rd. and can only marginally be seen from it in the winter. No additional panels will be requested in the future as this addition will come close to providing enough power for the entire house. There were no questions from the public for Mr. Salovaara.

Mr. Keller testified to the following, either directly or in response to questions from the Board, its professionals and/or the public: Referring to application drawing sheet 1 of 2 that shows the overall plan of the property, he identified the front yard location of the existing solar arrays and the area where the applicant proposes to add a third. The new panels will be in line with the exiting panels about 214' from the Dryden Rd. right-of-way line and not protrude further into the front yard. The new array will connect with the existing inverter box and utilize an existing empty conduit to provide electricity to the home so no new trenching will be needed other than to connect the new array wiring to the inverter box mounted on the middle array. A small portion of the new solar array will be located in an area of 15~25% slopes but the only soil disturbance will be where holes are drilled for the six columns that support the array frame. After the columns are placed the soil will be returned to its natural state. The amount of soil disturbance is well below the allowable limit. Sheet 2 of 2 was referenced to show that the size of the proposed array (12'-9" x 54'-2") is similar to those existing (10' x 41' and 10' x 37'). The solar panels are sloped on about a 40 degree angle that has a rise of 10'-9" from the lowest edge to the top, with a minimum ground offset of 2'. Based on the grade falling 6' to 7' across the array, the maximum height at the northwest corner will be 20' above ground. No trees need to be removed to install the new array. Exhibit A-1 (2015 color aerial photo from the NJ Highlands Council website, 8.5" x 11") was introduced and copies were distributed. The subject property was outlined with a yellow border. The photo shows Dryden road, the existing home, its environs and the location of the existing solar panels. It also shows there are no trees in the proposed location for the new array.

In addressing the "c" variance required for placing an accessory structure in the front yard, Mr. Keller stated that the positive criteria is satisfied due to the MLUL having been amended to categorize solar panel installations as inherently beneficial uses. He explained why he believes the variance qualifies as either a "c1" or "c2" variance, how the proposed installation satisfies certain purposes of the MLUL and how there are no negative impacts as demonstrated by the existing solar arrays, their juxtaposition to Dryden Rd. (50' lower), no trees needing to be removed and no new trenching being needed. The location of the arrays complies with the required front yard setback for a principal structure. Mr. Keller stipulated compliance with Mr. Brightly's 9/25/18 report comments. It was noted that the recent survey shows that the existing panels do not fully comply with the prior resolution's 220' setback requirement or its 20' height limit.

Mr. Brewer summarized the application stating that there are adequate proofs to grant the requested variance and asked that the application be approved as amended and with the conditions agreed to by the applicant. There were neither questions for Mr. Keller nor comments on the application from the public. Ms. Kramer commented that this is a reasonable application, it is environmentally friendly and the benefits outweigh any detriments. Mr. Yale agreed with her comments. There was no further discussion by the Board. Ms. Kramer moved approval of the application as agreed to by the applicant and as conditioned by the Board. Approval was seconded by Mr. Sailliard.

Roll call vote:

All in favor: Members English, Dello Russo, Sailliard, Kramer, Carton, Traynor and McDowell.
Those opposed: None.

B. Review of 11/5/18 Bills List with Vouchers:

Motion to pay bills in the amount of \$2,812.50: Ms. Kramer. Second: Mr. Sailliard.

Roll call vote: All members voted in the affirmative.

9. Pending Applications: the Board acknowledged the following pending applications and their respective scheduling:

A. Application #18-10 FALIVENE – Dimensional variance for in-ground pool & patio additions at 96 Rippling Brook Way; B: 30, L: 22.06, Zone: R-1-A; Deemed substantially complete 10/30/18; Decision required by 2/27/19; Waiver requests & application scheduled to be heard 11/19/18.

B. Application #18-11 TRICK – Dimensional variances to rebuild existing detached garage at 9 Stevens Street, B: 68, L: 5, Zone: R-4, Deemed substantially complete 10/30/18; Decision required by 2/27/19; Waiver requests & application scheduled to be heard 11/19/18.

10. Executive Session: Matter of ongoing remand litigation -Bernardsville Petroleum Group, LLC.

At Vice Chair English's request, Mr. Mottola read the closed session resolution on the record.

Motion to close the public meeting and reconvene in executive session: Ms. Kramer.

Second: Mr. Sailliard.

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.

11. Comments from Members.

12. Comments from Staff.

13. Adjournment:

A motion to adjourn was made by Mr. Sailliard; seconded by Mr. McDowell.

Voice vote: All members voted in the affirmative.

Vice Chair English adjourned the meeting at 10:47 pm.

Respectfully submitted,

Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: Salovaara-Dryden-Claremont-Commons-Bisogno-Minno-Trick-Falivene-litigation