

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – November 19, 2018
PUBLIC MEETING

1. Statement of Adequate Meeting Notice: Chairman Greenebaum.

2. Flag Salute: All present participated in the Pledge of Allegiance.

3. Roll Call:

Present: Members Greenebaum, English, Dello Russo, Kramer, Carton, Traynor and McDowell.

Absent: Members Sailliard, Sedlak, and Yale.

Board professionals present: Messrs. Rago, Szabo and Brightly.

4. Approval of Minutes: None.

5. Communications: None.

6. Old Business:

Memorialize Resolution #18-09 MIKAEL SALOVAARA – Bulk variance for addition to solar panel array in front yard; 170 Dryden Road, B: 2, L: 7, Zone: R-1-10; Approved 11/5/18.

Chairman Greenebaum read the resolution on the record. A typographical error and needed text correction were noted. Motion to adopt the resolution as amended was made by Mr. Carton and seconded by Mr. English.

Roll call vote:

All in favor: English, Dello Russo, Kramer, Carton, Traynor and McDowell.

Those opposed: None.

7. New Business:

A. 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.

Prior to the meeting, the applicant had submitted a written request for this application to be rescheduled to a future date of the Board's preference. Mr. Rago confirmed with Mr. Mottola that required notices to the public had been provided. Chairman Greenebaum announced that the hearing would be carried to January 7, 2019 without further notice to the public.

B. Application #18-10 FALIVENE – Dimensional variances 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; Requests for waivers, completeness determination and the application hearing proceeded as follows:

Appearing for the application were subject property owner Kara Falivene, her husband Peter Falivene, Esq. and Engineer/Surveyor/Planner Kiersten Osterkorn. All were sworn and Ms. Osterkorn was also qualified as an engineer, surveyor and planner.

Exhibits introduced:

A-1: 11/19/18 "Aerial Exhibit", 24" x 36" color aerial photograph w/ superimposed property lines and work area, by Omland & Osterkorn Consulting Engineers & Surveyors.

A-2: 11/19/18 "...Topographic Exhibit", 24" x 36" color aerial photograph w/ superimposed property lines and topographic contours, by Omland & Osterkorn Consulting Engineers & Surveyors.

Mr. Falivene: He and his family have lived at the subject property for more than five years. They wish to continue living long term in Bernardsville and in the current home, with the addition of an in-

ground pool and patio in the rear yard. Two of their children are on the town swim team and other family members would benefit medically from+ the use of a pool. Variances for steep slope disturbance and rear yard setback are required.

Ms. Osterkorn: She surveyed the property. Referring to sheets 3 and 5 (part of the submitted application) she described the site, environs and layout of the pool and patio located in the rear yard. The pool and patio are proposed to be terraced into the hillside behind the house. Cut and fill will be utilized to avoid having to construct a single, large retaining wall and to minimize steep slope disturbance. No trees need to be removed. Proposed impervious coverage will be 16,297 S.F. where 17,375 is allowed. Seepage pits will be installed to manage the increased runoff, which will continue in the same sheet flow pattern that currently exists. Due to their distance from the proposed development, neighboring structures will not be impacted. The pool will be setback 44.7' from the side property line, where 40' is required. A corner of the pool patio and part of the adjacent retaining wall will be located 34.6' from the side property line. (Although identified by the Zoning Officer as needing a variance, Mr. Szabo noted that the language in the Land Use Ordinance applies only to buildings in setbacks and not unroofed structures, such as pools and patios.) Proposed disturbance of slopes in the >30% range is 2,535 S.F., where 250 S.F. is allowed. Referring to exhibit A-2, it was shown that the majority of the site has slopes >30%, which allows for a c.(1) variance under the statute. Most of the neighboring properties have significant slopes and similar developments as proposed in this application. Efforts are being made to mitigate the magnitude of slope disturbance and impacts to the site as a whole and neighborhood by locating the pool in the rear yard.

Responses to Board questions and professionals' report comments: The 40' setback line falls about midway between the pool and the retaining wall. The house on neighboring lot 22.07 is more than 200' away and at about the same elevation as the pool. The house on neighboring lot 22.08 is about 40' away and at about 5' lower than the pool. The pool dimensions are 42' x 18'. Shifting the location and/or reducing the size of the pool/patio to avoid the setback variance was considered but not done because the encroachment was not initially recognized as a violation; its magnitude (5.4') is de minimus, there are no impacts to neighbors; the utility of the patio, which is not very large, would be diminished by 50 S.F. and the layout would no longer be symmetrical to the house. The well is located on the driveway and protected by bollards. No benefits would be gained by moving the pool to the area suggested by the Environmental Commission, there would be a greater setback encroachment, trees would have to be removed and the area is more shaded and gets less sunshine. The applicant had no issues with any of the planning, zoning or engineering report comments and stipulated compliance with same. The need for a stormwater management O&M manual and associated deed restriction for continued maintenance responsibility was noted. Mr. Brightly said the pool should not be discharged to the seepage pits as per the Environmental Commission report and that he does not believe there are any wetlands on the site. He said that all of the slope disturbance is within the >30% range as defined by the ordinance. It was noted that more than 50% of the site has slopes of 30% or greater. The flatter areas of the site are those that have already been developed.

There were no questions or comments from the public. Mr. Szabo recommended the Board state in its annual report the need to clarify the Land Use Ordinance language regarding structures located within required yards. The Board agreed with the location, size and layout of the proposed development. Ms. Kramer moved to approve the application as normally conditioned and as stipulated by the applicant. Mr. Dello Russo seconded the motion.

Roll call vote:

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

C. Review 11/19/18 Bills List with Vouchers:

Motion to pay bills in the amount of \$3,768.75: Mr. McDowell. Second: Ms. Kramer.

Roll call vote:

All members voted in the affirmative except Mr. Dello Russo who abstained.

D. Preparation of Annual report: Absent any volunteers, Chairman Greenebaum assigned preparation of the annual report to Board member Paul Sedlak. Mr. Szabo will provide a draft commentary for inclusion in the report that language in the Land Use Ordinance be clarified regarding the prohibition of structures as well as buildings within required setbacks.

E. Draft 2019 Schedule of Meetings:

The distributed draft schedule was reviewed and discussed. Mr. Mottola was asked to check with the Clerk for possible conflicts of Board reorganization meeting dates with the Borough Council's reorganization dates for 2019 and 2020. Chairman Greenebaum stated that he will be away for the March 4th meeting.

- 8. Pending Applications:** the Board acknowledged the following pending 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 & 11/5/18; Decision required by 12/6/18; Hearing scheduled to be continued 12/3/18.

- 9. Executive Session:** Matter of ongoing remand 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. McDowell.

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. McDowell.

Second: Mr. Dello Russo.

Voice vote: All members voted in the affirmative.

- 10. Comments from Members.**

- 11. Comments from Staff.** Mr. Szabo recommended that as a jurisdictional matter, prior to hearing any application, the Board should formally deem the application complete or incomplete, based on the information provided and waivers requested. As per the Dunbar Homes case recently decided by the NJ Supreme Court, it establishes the time a complete application was submitted and provides vested rights for both the applicant and the municipality. Mr. Szabo will add a statement to his completeness reports that the Board should certify completeness at the outset of the hearing.

- 12. Adjournment:**

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

Voice vote: All members voted in the affirmative.

Chairman Greenebaum adjourned the meeting at 9:43 pm.

Respectfully submitted,

Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: Salovaara-Dryden-Trick-Stevens-Falivene-Rippling-Brook-Osterkorn-litigation.