

BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
**Minutes – January 18, 2021**  
**VIRTUAL ONLINE REORGANIZATIONAL & REGULAR MEETING**

1. **Statement of Adequate Meeting Notice:** Read by temporary Chair Greenebaum at 7:30 pm.
2. **Swearing In of Members:** Oaths of Office were administered by Board Attorney Rago to renewed member Thomas Carton and renewed alternates (#2) Ed McDowell and (#4) Thomas Slocum.

3. **Roll Call:**

Present – Members Greenebaum, English, Sailliard, Dello Russo, Kramer (arrived at 7:53), Sedlak, Carton, Traynor, Mr. McDowell & Slocum.

Absent – Mr. Dello Russo

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

4. **Election of Officers:**

A. (Mr. Rago officiating) Nomination of David Greenebaum as Chair by Mr. Carton and second by Mr. McDowell. Hearing no others, nominations were closed by Mr. Rago.

Roll call vote to affirm Mr. Greenebaum as Chair:

All members voted in the affirmative except for Mr. Greenebaum, who abstained.

B. Nomination of Edward English as Vice Chair by Mr. Carton and seconded by Mr. McDowell. Hearing no others, there was a motion to close nominations by Mr. McDowell and second by Mr. Slocum.

Voice vote to affirm Mr. English as Vice Chair:

All members voted in the affirmative.

5. **Annual Resolutions:** Chairman Greenebaum read each of the following resolutions on the record prior to any discussion and/or voting for each:

**#01-2021: 2021 Meeting Schedule**

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Sedlak.

Roll call vote:

All members voted in the affirmative.

**#02-2021: Administrative Officer – Frank Mottola.**

Motion to adopt the draft resolution as presented: Mr. Carton. Second: Mr. McDowell.

Roll call vote:

All members voted in the affirmative.

**#03-2021: Attorney – Louis P. Rago, Esq.**

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Slocum.

Roll call vote:

All members voted in the affirmative except Mr. Sedlak, who abstained.

**#04-2021: Engineer** – Ferriero Engineering, Inc. (Robert Brightly, P.E.)

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Sedlak.

Roll call vote:

All members voted in the affirmative except Mr. Carton, who abstained.

**#05-2021: Planner** – Burgis Associates, Inc. (John P. Szabo, P.P., AICP)

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Slocum.

Roll call vote: All members voted in the affirmative.

**#06-2021: Official Newspapers** – Bernardsville News & Courier-News.

Motion to adopt the draft resolution as presented: Mr. McDowell. Second: Mr. Carton.

Roll call vote: All members voted in the affirmative.

**6. Approval of Minutes:** Review draft minutes of 11/16/20 meeting.

Upon review, a motion to approve the minutes as drafted was made by Mr. McDowell and seconded by Mr. English.

Voice vote:

All eligible members voted in the affirmative

**7. Communications:** Copies of the following documents were distributed to the Board:

**A. 12/15/20 Email and letter from Vincent Bisogno, Esq. re App. #18-08 Claremont Manor status update and decision deadline extension to 4/30/21.**

Chair Greenebaum summarized Mr. Bisogno's letter which stated that the application was being amended based on the recently adopted zoning changes to the downtown business and commercial zones and that those changes would result in the application no longer requiring any "d" variances. The letter expressed the applicant's desire for the application to remain with the Board of Adjustment due to the significant amount of testimony that has been presented and the Board's familiarity with the application. Mr. Rago said that he had discussed the matter with Planning Board attorney Steve Warner, who concurred that the court case cited by Mr. Bisogno as legal precedent for the application to remain with the Board of Adjustment does not apply in this instance. Mr. Rago said he would communicate same to Mr. Bisogno and that the revised application must now be heard by the Planning Board, which will have jurisdiction.

**B. BOA draft 2021 Roster:**

Upon review, no changes to the draft roster were requested by the Board or its professionals

**C. Engineering Consultant Natural Systems Utilities (NSU) 2021 Fee Proposal w/ A. Stern resume.**

As requested by the Board, Mr. Brightly solicited proposals from water systems engineering firms to assist the Board in its review of NJAW Fenwick tank application **#20-01**. Upon review of the above proposal, the Board asked Mr. Brightly to obtain three references from NSU and to contact those organizations. Mr. Brightly agreed to do so and relate his findings to Mr. Mottola for distribution and consideration by the Board at its 2/1/21 meeting.

Mr. Rago noted that the Board had received notices of legal representation from two law firms on behalf of two neighborhood objectors to this application. Mr. Mottola confirmed that he had already distributed those notices to the Board.

**D. The New Jersey Planner, November/December, VOL.81, No.6.**

*(There was no discussion of this item)*

## 8. Old Business:

Continued Application #20-04 NJ AMERICAN WATER CO., INC. – Preliminary and Final Site Plan with d3 Conditional Use Variance for Booster Station; Oak Ridge Road; B:48, L:5, Zone:R-2; Previously heard and deemed complete 12/7/20; Decision required by 4/6/21.

Appearing on behalf of the application were attorney Niall O'Brien; project planner Tiffany Morrissey, landscape architect Gerald "Jay" DeFelicis and engineer Joseph Bongiovanni. Ms. Morrissey and Mr. DeFelicis were sworn and qualified. Mr. Bongiovanni remained under oath from his prior appearance.

Appearing on behalf of objectors, Kingwood Estates Neighborhood Association, Inc., (KENA) was attorney Robert Simon.

No new exhibits were introduced.

Mr. O'Brien updated the Board on the ongoing dialogue NJAW has been having with KENA through its attorney Mr. Simon. The latest design modifications have been sent to the group, with which they are working toward a mutually acceptable building design and other issues of concern to the neighbors. As those issues remain under negotiation, NJAW said it would refrain from further discussion of the architectural design that was previously presented, until it has been determined if an agreement can be reached with KENA. NJAW also agreed to allow Mr. Simon to defer cross-examination of tonight's and the December 7<sup>th</sup> witnesses if an agreement cannot be reached.

Mr. Simon entered his appearance on behalf of KENA. As requested by Mr. Rago, he confirmed that he has no conflicts with any members of the Board and that he will provide the names of persons that comprise KENA, prior to the next meeting. He said he concurred with Mr. O'Brien's characterization of the ongoing discussions as cooperative and making progress. He also stipulated his agreement to defer cross-examination of NJAW's witnesses should that become necessary.

Ms. Morrissey affirmed that she has visited the site and neighborhood, reviewed all of the application materials and reviewed the Borough's land use ordinances and master plan. A "d3" variance is required as NJAW cannot meet one of the seven conditional use standards of the R2 zone. The site's 20,299 S.F. lot area does not meet the minimum lot area standard of 50,000 S.F. The proposed structure will have 1,038 S.F. which does not meet the zone's minimum floor area requirement of 1,200 S.F. for a single family dwelling. While NJAW provided notice of the need for a variance for this deficiency, Mr. Szabo opined in his 11/3/20 report that this requirement is not applicable to the proposed development. Ms. Morrissey provided testimony as to why the "d3" variance is justifiable. In accordance with the *Coventry Square* standards, the site can accommodate the use and the location is appropriate for the use. Even though the lot is undersized for the zone, all other requirements are met or exceeded. The comparatively small size of the proposed development will be in scale with the lot size and will be more like an accessory structure in appearance. Justifications were provided as to why the use should be considered an inherently beneficial use, stating that it provides water usage to the community and increases water pressure for residential and fire safety uses. She also listed zoning purposes that are advanced by the application. Regarding the negative criteria, she said there is no substantial detriment to the public good nor substantial impairment to the zone plan or zoning ordinance.

Responding to Board questions Mr. O'Brien stated that NJAW did not pursue purchasing additional land from surrounding property owners as all of the contiguous properties are also undersized for the zone. Testimony will be provided at the next hearing by someone from NJAW who can address the appropriateness of the facility's size. Changes to the building's aesthetics will also be explained at that hearing. Ms. Morrissey responded to questions and approval criteria posed by Mr. Szabo.

There were no questions from the public for Ms. Morrissey.

Mr. DeFelicis presented the tree removal and landscape design plans that were displayed on screen. These were parts of the submitted application documents and not introduced as exhibits. He said the building's location was determined based on minimizing the need for tree removals. For the landscape design he focused on using native species and those that would fit into the residential character of the neighborhood. It will provide for both screening and aesthetics. He said the 11/10/20 Shade Tree Committee (STC) report contained nothing with which they disagreed or cannot comply. The plans will be updated to provide the additional information and plantings requested in the comments section of the report. The plants selected for screening will fill in as they mature but not such that they inhibit their own growth. A calculation will be added to the tree removal plan that shows more than 50% of the existing tree canopy will remain. He will double check to assure that the correct number of replacement trees are listed and provided. Mr. O'Brien said that a maintenance schedule will be provided and Mr. Szabo noted that such maintenance is typically enforced by the zoning officer. NJAW will consider adding plants at or near the building to soften its appearance. The only exterior lighting will be decorative, wall mounted sconces located at the doors. They will be softer, lower temperature LED fixtures. Mr. Bongiovanni clarified that the lights will be on motion detectors but not timers.

There were no questions from the public for Messrs. DeFelicis or Bongiovanni.

Mr. O'Brien requested that the hearing of this application be continued at the February 1 meeting. Mr. Simon expressed concern that might be too soon with regard to finalizing an agreement and he personally is not available for that night. Mr. O'Brien said his client can comply with the 10-day submittal deadline for the February 1 meeting and will do whatever is necessary to complete an agreement with Mr. Simon prior to that date. Additionally, he asked that the continuation of NJAW application #20-01 Fenwick Tank be carried to March 1<sup>st</sup>. Same was agreed to by the Board and announced by the Chair.

## **9. New Business:**

**A. Application #20-02 BV Two, LLC** - Preliminary & Final Major Site Plan w/ Use and Bulk Variances for storage structures with outdoor storage; Old Quarry Road; B:100, L:2.41, Zone I; Received 3/25/20; Deemed incomplete, subject to waiver requests, 10/1/20; Revised application submitted 10/23/20 under review; Waiver requests & completeness determination scheduled for 1/18/21.

Chair Greenebaum announced that there is a need to carry this application to **2/16/21** and that there would be no further notice to the public.

**B. Review/Adopt Board of Adjustment 2020 Annual Report.**

Chair Greenebaum provided an overview of the report. It was not certain if the Board's 2019 report recommendation on clarifying swimming pools as structures was addressed by Council and

codified. Mr. Szabo did not believe that had been accomplished but agreed to check and report back prior to the next meeting. He remains in support of that ordinance clarification being completed. Mr. Sedlak acknowledged that one of the Board's prior recommendations, for adopting design standards in the downtown commercial districts, has been acted upon.

**C. Review 1/18/21 Bills List with Vouchers (\$7,430.00).**

Upon review, a motion to pay the listed invoices was made by Mr. McDowell and seconded by Mr. English.

Roll call vote:

All members voted in the affirmative.

**10. Pending Applications:** The Board acknowledged the following applications and their respective status:

**A. Continued Application #19-09 OCHS** – Bulk variances for residential addition and retaining wall: 180 Round Top Road, B: 81, L: 24, Zone: R-1A; Received 9/24/19; Decision required by 2/29/20. Previously heard 12/2/19 & 11/16/20; scheduled to be continued 2/1/21; Hearing continuation date and deadline extension tentatively scheduled for 5/3 & 5/31/21 respectively. Mr. Mottola to confirm actual date with applicant.

[Eligible to vote: Members Greenebaum, Sailliard, Kramer, Traynor, McDowell and Slocum.]

**B. 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, 11/5 & 12/3/18 and 1/22, 2/4, 4/1, 5/6 & 9/16/19; Applicant intends to file revised application with no use variance required; Per Board attorneys Rago and Warner, jurisdiction for application moves to Planning Board.

**C. Continued Application #20-01 NJ AMERICAN WATER CO., INC.** - Preliminary and Final Major Site Plan with Conditional Use & Bulk Variances for replacement water tower at Mendham Road; B: 5, L: 5, Zone: R-1; Deemed substantially complete 10/1/20; Previously heard 11/16/20; Scheduled to be continued 2/1/21.

**D. Continued Application #20-07 BANK OF AMERICA (ATM)** – Amended Site Plan w/ Dimensional Variances; 37 Morristown Rd.; B: 125, L: 8, Zone: C-1; Rec'd 8/12/20; Previously heard 11/2 & 12/7/20; Decision required by 3/2/21; Scheduled to be continued 2/16/21.

[Eligible to vote: Greenebaum, English, Sailliard, Kramer, Carton, McDowell and Slocum.].

**E. Application #20-08 MANNING** – Bulk Variances for Relocation and Additions to Existing Single-family Residence, 13 Orchard Street; B: 131, L: 4, Zone: R-4; Received 10/8/20; Pending completeness review.

**F. Application #20-09 SOMERSET HILLS COUNTRY CLUB** - Preliminary & Final Major Site Plan w/ Use Variance for Patio Addition; 180 Mine Mount Road; B: 30, L: 11, Zone: R-1; Received 12/21/20; Pending completeness review.

**11. Comments from Members. None.**

**12. Comments from Staff: None.**

**13. Adjournment:**

Motion to adjourn: Mr. McDowell.

Second: Mr. English.

Chairman Greenebaum adjourned the meeting at 9:45 pm.

Respectfully submitted,



Frank Mottola,  
Planning & Zoning Boards  
Administrative Officer

Keywords: reorganization-resolutions-NJAW-Oak-booster-O'Brien-Simon-Morrissey-DeFelicis.