

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – April 19, 2021
VIRTUAL ONLINE MEETING

1. **O.P.M.A. Statement:** A statement of adequate meeting notice and adherence to the state mandated emergency remote meetings protocols, as set forth on this meeting's web-posted agenda, was read by Chair, David Greenebaum, at 7:32 pm.

2. **Roll Call:**

Present: Members Carton, English, Greenebaum, Kramer, McDowell, Sailliard, Slocum and Traynor (arrived 8:29).

Absent: Members Dello Russo, Kramer and Sedlak.

Board professionals present: Attorney Louis P. Rago, Engineer Robert Brightly and substitute Planner Tom Behrens.

3. **Meeting Minutes:** Review draft minutes of 3/15/21 meeting.

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

Voice vote:

All eligible members voted in the affirmative.

4. **Communications:** 4/7/21 D. Hickey, Esq. letter consent to decision deadline extension to 9/17/21 re Application #20-07 Bank of America – ATM (re 7F).

5. **Old Business:** Continued 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; Waivers granted, deemed complete and previously heard 2/16/21.

Appearing on behalf of the application were attorney Frederick Zelley, CEO & owner Foy Cooley, civil engineer Cathy Mueller, civil/environmental engineer James Cosgrove and planner James Kyle.

Mr. Zelley refreshed the Board on the nature of the application and what had transpired at the 2/16/21 hearing. Because this proposed storage facility application seeks permission for exterior on-site storage, a use variance is required.

Ms. Cooley was recalled and she reviewed her 4/8/21 letter to the Board which responds to the Fire Prevention Bureau's comments and stipulates the fire prevention measures the applicant will take in that regard. She said that the cameras they will have on site will be recording but will not be the thermal type. Only wheeled vehicles may be stored outdoor and those must be in working order. Neither the repair of vehicles nor outdoor storage of materials will be permitted. All vehicles must be insured and tenants goods must also be insured. BV Two also carries liability insurance.

There were no questions for Ms. Cooley from members of the public.

Mr. Cosgrove was sworn and accepted as qualified in his fields of expertise. The 2/16/21 Environmental report he issued was discussed. The property was previously used as a concrete manufacturing facility. Consequently, the gravel covering the site is heavily compacted from constant truck traffic so as to be considered impervious to storm water, which either ponds or runs off the property, which runoff is of poor quality. He expects that will be improved by the new development. Newly graveled areas where the outdoor storage area will be will provide some stormwater retention and a slower release of it. Mr. Cosgrove addressed issues raised in the Environmental Commission's 1/5/21 report. He refuted the notion that the ground water quality will be impacted by the development. Due to the compacted, impervious nature of the site, there is currently very little infiltration and that is not expected to change. Infiltration which does occur will be of better quality and the new gravel will act as a pre-runoff filter. The applicant complies with state and local regulations, including those for stormwater runoff.

There were no questions for Mr. Cosgrove from members of the public.

Mr. Kyle was sworn and accepted as qualified in his field of expertise. He described the extent of his project review and the Borough's zoning requirements. He emphasized that the use variance relief sought is only for the outdoor storage element of the application, since the overall use is permitted in the I - Industrial zone. Bulk variance relief is required for the proposed vehicle storage in a side yard which is supposed to be kept clear for emergency access. The access drive (existing) is only 30' wide where 40' is required. Lot coverage of 75% is permitted where 94.2% is existing and will remain. A half foot-candle of lighting is permitted where 0.8% is proposed along Old Quarry Road. Three proposed parking setbacks are deficient. Neither a required loading dock nor landscape planting in the parking area are proposed. Required off-street parking for customers is not provided. Additionally, a waiver is required for not providing drywell infiltration for roof runoff. Mr. Kyle discussed and provided justifications for granting each of the required variances. He displayed three photos from his 1/14/21 report that show the current use of the property, the surrounding property uses and the proximity of homes to the site. These were presented in support of the requested variances. The issue of how cleared snow would be handled was discussed with Mr. Kyle and Ms. Mueller. If site areas are not adequate arrangements would be made for offsite removal.

Mr. Behrens questioned Mr. Kyle on the planning aspects of the application and provided his own analysis on the subject. He cited a distinction between a single storage building and the modular type units proposed. He affirmed the Borough's continued prohibition of outdoor storage based on the latest master plan reexamination report. He opined that if the Board looks favorably on the application applying conditions to mitigate any impacts of the variances would be important. Providing clarifications for Mr. Rago, Mr. Zelley confirmed that 56 indoor and 24 outdoor storage units are proposed and Mr. Kyle estimated, based on a Google Earth map, that the height difference between the storage site and the residential lots above the quarry is 89' to 90'. Ms. Cooley clarified that vehicles may not protrude beyond the designated length of the outdoor storage spaces.

There were no questions for Mr. Kyle from members of the public. Nor were there any public comments on the application.

Mr. Zelley summarized the application, emphasizing that virtually all of the surrounding uses are more egregious in terms of visibility and noise than the proposed storage facility. He alluded to all of the openly parked heavy equipment and dealership cars on nearby sites. Given that there

were only five members eligible to vote, He requested the Chair take a straw poll to determine whether to hold a vote tonight or wait and let additional members qualify to vote at a future meeting.

Board comments included Mr. McDowell's who said that while he finds the site suitable for exterior storage, he is concerned that the master plan does not support it. Chair Greenebaum commented favorably on the suitability of the site for the proposed use. Although not entirely convinced the positive criteria is satisfied, Mr. Slocum found the negative criteria adequately proven. Mr. Rago discussed with the Board and Mr. Brightly prospective approval conditions that arose during the course of both hearing nights. Of particular concern was that the applicant find a way to delineate the boundaries of outdoor storage spaces so that tenants do not further encroach on the 15' graveled easement beyond, as the applicant does not wish to use stopping blocks. Upon polling the Board, no qualified members indicated they were against the application. Accordingly Mr. Zelley requested an actual vote.

A motion to approve the application was made by Mr. McDowell and seconded by Mr. Sailliard.
Roll call vote:

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

Those opposed: None. Those abstaining: None.

6. New Business: Review 4/19/21 Bills List w/ invoices:

Upon review, a motion to pay the listed invoices in the total amount of **\$5,168.25** was made by Mr. McDowell and seconded by Mr. Sailliard.

Roll call vote:

All members voted in the affirmative.

7. Pending Applications: The Board acknowledged these applications and their respective status:

A. Application #21-01 PARAGANO – Bulk Variances for Additions and Renovations to Existing Single-family Residence; 40 Flintlock Court; B: 80, L: 33.13, Zone: R-2; Received 2/23/21; Decision required by 6/23/21; Deemed complete 3/25/21; Decision required by 7/23/21; Scheduled to be heard 5/3/21.

B. Application #21-02 ADAMS – Bulk Variance to Rebuild Detached Garage for Single-family Residence; 77 Mullens Lane, B: 59, L: 7, Zone: R-4; Received 2/25/21; Waiver requests, completeness determination and hearing scheduled for 5/3/21.

C. 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; Hearing deadline extended to 5/31/21; Scheduled to be continued 5/17/21.

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

D. Continued Application #20-01 NJ AMERICAN WATER CO., INC. – Fenwick Tower; Preliminary and Final Major Site Plan with Conditional Use & Bulk Variances for replacement water tank at Mendham Road; B: 5, L: 5, Zone: R-1; Deemed complete & hearing commenced on 11/16/20, also heard on 3/1 & 4/5/21; Scheduled to be continued and decision deadline extended to 5/17/21.

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

E. Application #21-03 HERNANDEZ - Bulk Variances to Expand Single Family Residence & Rebuild Detached Garage; 16 Woodland Road, B: 78, L:5, Zone: R-4; Received 3/23/21; Waiver requests, completeness determination and hearing scheduled for 6/7/21.

F. 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 and 2/16 & 4/5/21; Scheduled to be continued and decision deadline extended to 7/19/21.

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

8. **Executive Session:** None.

9. **Comments from Members:** None.

10. **Comments from Staff:** None.

11. **Adjournment:**

Motion to adjourn: Mr. McDowell.

Second: Mr. English.

Voice vote:

All members voted in the affirmative.

Chair Greenebaum adjourned the meeting at 9:22 pm.

Respectfully submitted,



Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: Bank-Hickey-BV-Two-Zelley-Cooley-Old-Quarry-self-storage-Mueller-Kyle