

BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
Minutes – June 21, 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 7:30 pm.

2. **Roll Call:**

Present: Members Carton, English, Greenebaum, Kramer, McDowell, Sailliard, Slocum and Traynor.

Absent: Members Dello Russo and Sedlak.

Board professionals present: Attorney Louis P. Rago, Engineer Robert Brightly, Planner John Szabo, Jr., water systems engineers, Kevin Boswell, P.E. and Giselle Diaz, P.E.

3. **Meeting Minutes:**

Review draft minutes of 5/17/21 meeting:

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

Voice vote:

All eligible members voted in the affirmative.

4. **Communications:**

6/15/21 R. Schkolnick, Esq. letter re BOA Application #20-01 NJAW-Fenwick Tower (re #5).

5. **Old Business:**

Continued Application #20-01 NJ AMERICAN WATER CO., INC. – Fenwick Tank

–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; Decision deadline extended to 6/21/21.

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

Appearing on behalf of the application were attorney Michael Floyd, and engineers Edward DiMond and Vincent Monaco. Appearing on behalf of objectors were attorneys David Amerikaner (for Paul Savas at 450 Mendham Rd.) and Richard Schkolnick (for Karen Martin).

Introduced exhibits:

- A17 - Simulated view of tank (color white) from location 1 on Exhibit A3
- A18 - Simulated view of tank (color light blue) from location 1 on Exhibit A3
- A19 - Simulated view of tank (color light green) from location 1 on Exhibit A3
- A20 - Simulated view of tank (color white) from location 2 on Exhibit A3
- A21 - Simulated view of tank (color light blue) from location 2 on Exhibit A3
- A22 - Simulated view of tank (color light green) from location 2 on Exhibit A3
- A23 - Simulated view of tank (color white) from location 3 on Exhibit A3
- A24 - Simulated view of tank (color light blue) from location 3 on Exhibit A3

- A25** - Simulated view of tank (color light green) from location 3 on Exhibit A3
- A26** - Simulated view of tank (color white) from location 4 on Exhibit A3
- A27** - Simulated view of tank (color light blue) from location 4 on Exhibit A3
- A28** - Simulated view of tank (color light green) from location 4 on Exhibit A3
- A29** - 10/29/19 Existing Conditions plan, #C00 by Buckhart Horn, Inc., last dated 5/7/21
- A30** - 6/10/21 Aerial View Tree Removal - Summer (11" x 17") #F-2 by Buckhart Horn, Inc.
- A31** - 6/10/21 Aerial View Tree Removal - Winter (11" x 17") #F-1 by Buckhart Horn, Inc.

Mr. DiMond remained under oath from his prior appearance but restated his credentials as a civil engineer. Previously introduced exhibit **A3** was displayed to show the four surrounding locations from which views of the proposed tank were photo simulated. To scale images of the tank were inserted with the heights show as equivalent to those established from the balloon test performed on 2/25/21. The bright red balloon shown in the photos was 16' long x 6' diameter. Previously introduced exhibits **A13**, **A14**, **A15** and **A16** were also displayed to show views of the test balloon from all four of the locations indicated on exhibit **A3**. The four viewing positions were duplicated in newly introduced and displayed exhibits, **A17** through **A28**. Mr. DiMond displayed and described exhibits **A29**, **A30** and **A31** related to the height and locations of trees to be retained and removed, most notably the clear zone surrounding the proposed tank. Per the landscaping plan, seven trees are to be replanted on site and twenty-one trees offsite, 12' to 14' in height. He said nurseries do not recommend planting taller trees due to their survival rate. Distances to surrounding structures were stated. Previously introduced exhibit **A5**: construction sequencing drawing **C03**, was displayed and explained. It indicated the location of a temporary protective fence, within which contractors will be able to work, park and stage materials, It also contained a table showing the duration of construction for each phase of the project. Most of the work will have no offsite impact however, temporary one-lane closures for deliveries during retaining wall and tank construction were noted. The closures will last ten to fifteen minutes for each delivery, with one to three deliveries per day during the various phases. Offsite parking will be required for the four month period shown for installation of the tank bowl panels. Workers will be transported to the site from a remote parking area, the location of which has not yet been determined. An overall construction period of 400 days is anticipated.

Mr. Carton commented that larger trees have been planted for other Board approved projects, all which appear to be surviving. The applicant will provide the survivability percentages for various size trees as requested by the Board. The applicant stipulated to coordinating any necessary lane closures with the local police and abiding by their recommendations. Combined bidding, award and shop drawing phases of the project will take about four months after permitting and prior to the start of construction. Per Mr. DiMond, NJAW has already obtained the required NJDEP permit to construct this facility. Evaluation of alternate sites was not a component of that application. Mr. Floyd stipulated that there will be no cellular equipment located on the tower and would accept same as a condition of approval. Mr. Boswell asked why the engineer's report that accompanies a DEP application wasn't provided per his firm's requests. He also questioned how water will be temporarily supplied during the 400 work-day construction phase. Board chair Greenebaum, Mr. Rago and Mr. Szabo all opined on the seeming reluctance of NJAW to disclose critical, long requested information necessary to demonstrate the need for this facility. Chair Greenebaum further emphasized the importance of the Board knowing NJAW's means for providing water during the construction phase that normally would have come from this facility. Mr. Brightly discussed with Mr. DiMond site conditions regarding construction operations and staging. Chair Greenebaum noted a prior request for a photo simulation of the view (of the tank) from the driveway at 450 Mendham Road. He also requested

NJAW provide the weights of the trucks that will be used for construction and the weight carrying capacity of the roads they will traverse. Mr. Floyd represented that NJAW would provide the weights of trucks as a condition of approval as well agree to repairing any damage caused by construction vehicles.

Responses given to Mr. Amerikaner's questions included: Mazur associates performed the balloon test for NJAW and Mr. DiMond took the photos; the photo simulations show the existing trees at their current heights but do not show the replacement trees; the growth rate of the replacement trees range from 1.5' to 4' per year; the tank will be approximately 70' from 450 Mendham's driveway at the closest point; the material that will be stored most on site will be the water tank's prefabricated steel panels; a construction staging plan has not been prepared but it is anticipated that all construction and storage can occur within the site's boundaries.

Responses given to Mr. Schkolnick's questions included: Mr. DiMond signed and had the documents submitted to NJDEP for the tank permit application, which was submitted in September of 2020; Mr. Floyd's colleague, Mike Pullano, assisted in preparing the NJDEP application.

Mr. Floyd said that after Mr. Boswell's 6/24/21 review of NJAW's modeling, he will be able to represent to the Board that the system will remain operational for both potable and fire service, without disruption, during the tank construction phase. Mr. Schkolnick objected to the fact that the public may not participate in the 6/24 review, nor be provided with a copy of the nondisclosure agreement (NDA) that Mr. Boswell will have to sign. Per Chair Greenebaum, NJAW needs to provide testimony as to how it will continue providing water during the two year construction period. Mr. Rago agreed, in that Mr. Boswell may not be able to relate certain information he learns due to the NDA. Mr. Boswell also agreed, and added that NJAW needs to be providing more technical information to the Board as it is pertinent in understanding the merits of the application. Mr. Floyd said that NJAW will not perform modeling for alternate sites during Mr. Boswell's visit.

Mr. Monaco remained under oath from his 4/5/21 appearance and said that the Board of Public Utilities (BPU) doesn't normally get involved in "routine" projects of this nature. NJDEP's purview is to assure that systems are designed to NJ standards for public water systems. Towns are normally sent copies of permits that have been issued by DEP, but he did not know if that happened for this permit. Mr. Floyd said a copy of the permit would be provided to the Board.

Mr. Schkolnick's cross examination of Mr. Monaco elicited: that he was the lead negotiator for NJAW in the water contract negotiations with the Morris County MUA and that Executive Director Larry Gindoff was the chief negotiator for the MCMUA; Southeast Morris MUA was not a part of the negotiations but their executive director, Laura Cummings, attended some of the negotiations. Mr. Schkolnick displayed a 10/22/20 letter from NJDEP to NJAW and MCMUA in which the DEP acknowledges the changed water supply contract being negotiated. Per Mr. Monaco, a revised agreement was recently signed by NJAW and returned to MCMUA; the daily amount of water stated in the letter has since been further reduced by MCMUA to 250,000 gallons per day, as per the new contract; he will try to provide a copy of the email in which Mr. Gindoff states the need for further reduction of the water it will sell to NJAW; water sources and their availability were discussed; the DEP will not object to the reduced water purchase, as MCMUA is contractually overextended; the reduced amount agreed to will serve 67 customers in Mendham Borough. Mr. Schkolnick displayed and reviewed with Mr. Monaco a 5/11/18 letter from MCMUA to NJAW, which he previously supplied to the Board, and with which he sought

to demonstrate a monetary rather than an availability reason for MCMUA's termination of its prior contract with NJAW. Responding to Mr. Rago, Mr. Monaco said that the shortfall will come from the Passaic and Raritan water basins (owned by NJAW) as well as water purchased from the Passaic Valley Water Commission. The water from the new tank will serve Bernardsville but mainly Mendham Township and Borough.

Responses given by Mr. Monaco to Mr. Amerikaner included: a general description of the evaluation process by which the subject location would have been selected for the increased capacity tank, with the added caveat that he did not participate in the evaluation process; responding to Chair Greenebaum he said the term *long range plan* means about 15 years.

Given the hour, the applicant acceded to the Chair's recommendation that NJAW's planning expert be withheld until the next hearing, which was announced would be continued at the 8/2/21 meeting. A decision deadline extension was verbally granted to 8/31/21.

6. New Business:

A. Review 6/21/21 Bills List w/ Invoices:

Upon review, a motion to approve the listed invoices in the amount of **\$3,768.75** was made by Mr. McDowell and seconded by Mr. Slocum.

Roll call vote:

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

B. Continuation of electronic application submittals:

As he believes it is recommendable as an ordinance change, Mr. Mottola asked the Board for its opinion of making it mandatory, once applications are again heard live, that applications be submitted in both paper and digital forms, and made publicly available via the Borough website, as they currently are under the emergency remote meetings protocol. It is his belief that this requirement would greatly increase transparency and everyone's ease of access to information submitted for applications. This is not a significant imposition on applicants in that the vast majority of architectural and engineering drawings submitted for applications are created digitally in the first place. Letter and legal-sized documents are easily and inexpensively scanned to produce PDF files for submittal, as are most drawn documents not created digitally.

Mr. Szabo commented that many municipalities had been requiring digital submission of applications prior to the pandemic and that county and the state governments require digital submittal of all documents. Upon discussion, the Board was in agreement that submission of applications in both digital and hard copy forms should be continued beyond cessation of the emergency remote meeting protocols and that same should be recommended to the governing body for enactment as a revision to the borough's land use ordinance. It was further recommended that remote participation by the public be continued if technically feasible. A motion to have Mr. Mottola forward this recommendation to the Mayor and Council was made by Mr. Carton and seconded by Mr. McDowell.

Voice vote:

All members voted in the affirmative.

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

A. 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.]

***B. 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; Decision deadline extended to 12/31/21; Scheduled to be continued 9/7/21.*

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

***C. Application #21-04 PHILLIPS** – Bulk Variances for Addition and Alteration to Single Family Residence at 21 Chestnut Avenue, B: 34, L: 3.01, Zone: R-2; Received 4/8/21; Pending completeness review.*

***D. Application #21-05 SHAVER** – Bulk Variance for New Detached Shed on Single Family Residential Lot at 20 Southfield Drive, B: 28, L: 49.06, Zone: R-2; Received 4/22 & 5/4; Pending completeness review.*

***E. Application #21-06 GREGORY** – Bulk Variances for New Detached Barn on Single Family Residential Lot at 130 Chapin Road, B: 3, L: 7, Zone: R-1; Received 4/29/21; Pending completeness review.*

***F. Application #21-07 SCOTT** – Bulk Variances for Driveway and Patio Expansions at 371 Claremont Road B: 6, L: 10, Zone: R-1-10; Received 5/10/21; Pending completeness review.*

8. **Executive Session:** None.
9. **Comments from Members:** None.
10. **Comments from Staff:** None.

11. Adjournment:

Motion to adjourn: Mr. McDowell.

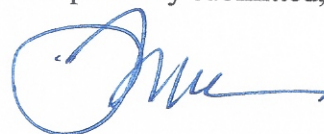
Second: Mr. Slocum.

Voice vote:

All members voted in the affirmative.

Chair Greenebaum adjourned the meeting at 10:50 pm.

Respectfully submitted,



Frank Mottola,
Planning & Zoning Boards
Administrative Officer

Keywords: NJ-American-water-tank-tower-Floyd-DiMond-Monaco-Amerikaner-Schkolnick.