

BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
**Minutes – August 16, 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, Sailliard and McDowell.  
Absent: Members Dello Russo, Sedlak, Slocum and Traynor.  
Board professionals present: Attorney Louis P. Rago, Engineer Robert Brightly and Planner John Szabo, Jr.
3. **Meeting Minutes:**  
Review draft minutes of 7/19/21 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:** The Board acknowledged and/or discussed the following correspondence:
  - A. The New Jersey Planner, May/June 2021 Vol. 82, No.3.
  - B. 8/5/21 F. Mottola memo to Mayor & Council re LDR amendment requiring continued submittal of applications in digital formats.
  - C. 8/2/21 F. Zelle, Esq. email requesting revisions to Resolution #20-02 BV Two, LLC (re 5.).
5. **Old Business:**  
Applicant-requested amendments to Resolution #20-02 BV Two, LLC; Preliminary & Final Major Site Plan w/ Use & Bulk Variances for storage structures and outdoor storage; Old Quarry Road; B:100, L:2.41, Zone I; Approved 4/19/21, Memorialized 7/19/21.  
The Board reviewed the revisions to resolution requested by the applicant's attorney, Frederick Zelle. Having discussed the proposed changes, a motion to amend the resolution as requested was made by Mr. McDowell and seconded by Mr. English.  
Roll call vote:  
All in favor: Members English, Greenebaum, Sailliard and McDowell  
Those opposed: None. Those abstaining: Members Carton and Kramer.  
Board Attorney Rago advised that a newspaper notice of the Board's action to amend the originally adopted resolution should be published. Mr. Mottola agreed to do so.
6. **New Business:**

A. 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; Deemed incomplete 6/21/21; *Waiver requests, completeness determination & hearing scheduled for 8/16/21.*

Appearing on behalf of the application were owners/applicants Pamela and Christopher Phillips and architect Timothy Coleman. All were sworn and Mr. Coleman was qualified. Mr. Mottola affirmed that notice of this hearing was adequately served.

Regarding requested waivers and completeness determination:

Per Mr. Szabo's 6/21/21 planning report, 13 checklist items were not provided, with either partial or complete waivers requested by the applicants. Of those, the Board agreed to waive items #2, #3, #5, #8 and #10 through #13. A motion to waive the eight identified checklist items, require the remaining to be provided and deem the application complete was made Ms. Kramer and seconded by Mr. Sailliard.

Roll call vote:

All in favor: Members Carton, English Greenebaum Kramer Sailliard McDowell.

Those opposed: None.

Ms. and Mr. Phillips described the application and the reasons behind it. The applicants have lived in the house for 30 years and wish to continue same. Because the residence does not have a garage, and existing the laundry room is in the basement, the applicants propose to construct an attached two car garage with a new laundry room located in a breezeway that connects the garage to the house. A 20' wide utility easement along the west property line, where a gravel driveway is located, prevents the garage from being constructed on the right side of the house. The most practical solution is to attach the garage to the east side of the house where a brick paved patio now exists. Placing a detached garage anywhere in the rear yard would diminish the utility of the property and the proposed garage. A new driveway will be constructed to access the garage and a rear portion of the gravel driveway will be removed.

There were no questions from members of the public for Ms. or Mr. Phillips.

Mr. Coleman explained the design concept behind the proposed site and floor layouts. The addition is situated in the proposed location to correspond with home's current layout and to allow for a driveway in front of the garage. The addition will be 17' from the front property line at its closest point. A front portion of the existing gravel driveway will be retained to provide for guest parking. The remaining portion will be removed and planted as a rain garden at the suggestion of Environmental Commission Chair Johanna Wissinger, who was in attendance and offered to provide resource materials via Mr. Mottola. The attic space above the garage will initially be used for storage but may become a fourth bedroom in the future. The addition's exterior will be finished with materials and colors that are compatible with the existing architecture. Mr. Coleman noted that the existing dwelling has a nonconforming front yard setback at the porch of 1.2', where 75' is required. The shed in the rear, southwest corner of the property is located within the utility easement and has a non-conforming rear yard setback of approximately 3', where 30' is required for the zone.

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

Mr. Carton suggested that the shed be moved out of the easement and 10' from the rear property line. Per Mr. Brightly's comment, the applicant agreed to pull back the existing retaining wall 5' from the edge of pavement. The Board determined that a 20' length of

existing gravel driveway, inside the property line, should be kept to facilitate guest parking. A variance can be granted for the existing driveway's non-conforming side yard setback of 0' as part of this application. The applicants stipulated that if the existing shed needs to be moved to access to the buried utility line, it will be moved out of the utility easement and at least 5' from the rear property line.

There were no comments from members of the public on this application.

Mr. Rago summarized the required variances and potential conditions, should the Board grant the application. The Board felt that variances should be granted for the house's existing non-conforming front yard setback as well. A motion to approve the application as conditioned and as stipulated to by the applicant was made by Ms. Kramer and seconded by Mr. Sailliard.

Roll call vote:

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

Those opposed: None. Those abstaining: None.

**B. 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; Deemed incomplete 6/29/21; *Waiver requests, completeness determination & hearing scheduled for 8/16/21.***

Appearing on behalf of the application were attorney Nicole Magdziak and planner Sanyogita Chavan. Ms. Chavan was sworn and qualified.

Regarding requested waivers and completeness determination:

Ms. Chavan provided testimony regarding the 17 checklist items that Mr. Szabo identified in his 6/29/21 completeness and planning report as not provided. Ms. Chavan requested that items #1 thru #4 and #7 thru #9 be waived for completeness purposes and provided on final plans submitted to Mr. Brightly for resolution compliance, provided the application is approved. For items #5 and #6, she argued that the information requested is not warranted solely for a driveway expansion application such as this. Items #10 and #11 were provided. For #12 the applicant had not researched whether there are any deed restrictions related to the conservation easement that runs along the property. For #13 Ms. Chavan said that the submitted site photos show that none of the listed items are present in the area of the proposed driveway expansion. For item #14, the driveway expansion requires no tree removals. Trees required to be shown will be added to the final plans. For items #15 and #17, none of the listed items exist in the area of the driveway expansion. Re item #16, there are not any historically or architecturally significant properties in the area

Responding to the Board, Ms. Magdziak stated that the applicant's engineer was not available for tonight's hearing but could provide additional testimony at a future hearing if the Board finds Ms. Chavan's explanation of engineering related matters inadequate.

Responding to the Chair's query, Mr. Carton opined that cumulatively the information provided is insufficient for him to be able to decide the application. Mr. Rago said he senses that the Board needs more of the checklist information provided prior to deciding the application rather than being added to resolution compliance drawings later. Chair Greenebaum found it incongruous for the applicant's planner to be testifying prior to their engineer, especially as relates to the impacts of impervious coverage which strongly requires engineering testimony. The Board, having been polled, generally indicated that more information is needed up front to be able to decide the application. Of the 17 requested waivers, the Board was of the opinion that item #1

can be provided on final drawings; items #2, #3, #4, #7, #8, #9, #13, #14, #15 must be provided for completeness; item #6 requires at least a statement that the listed items do not exist on the property or in the alternate, show them on the drawings; items #5, #16 and #17 can be waived; item #12 requires confirmation of the reason for the conservation easement; items #10 and #11 have been provided. Accordingly, Mr. Carton moved to deny the requested waivers and deem the application incomplete. Mr. Sailliard seconded.

Roll call vote:

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

Those opposed: None. Those abstaining: None.

Upon discussion with the applicant, it was agreed and announced that this application is carried to the 10/4/21 meeting with no further notice to the public. Ms. Magdziak promised that supplemental application documents will be submitted well in advance of the 10 day prior deadline, so that the Board's professionals have adequate time to review them.

**C. Review 8/2/21 Bills List w/ Invoices .**

Upon review, a motion to approve the listed invoices in the amount of **\$5,195.50** was made by Mr. McDowell and seconded by Mr. English.

Roll call vote:

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

**7. Pending Applications: The Board acknowledged these 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; Decision deadline extended to 12/31/21; Scheduled to be continued 9/7/21.**

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

Mr. Rago noted that he has made repeated attempts to contact Ms. Ochs regarding the continuation of her application on 7/7/21 but has received no response. Mr. Mottola confirmed that there is not currently an escrow deficit for this application and stated the he too has not heard from the applicant. The Chair asked him to try to schedule the Gregory application for 9/7 in the event the Ochs application does not proceed as scheduled that night.

**B. 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, 5/17 & 8/2/21; Decision deadline extended to 9/30/21; Scheduled to be continued 9/20/21.**

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

**C. 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; Decision deadline extended to and scheduled to be continued 10/18/21.**

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

*D. 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; Deemed incomplete 6/21/21; Waiver requests, completeness determination & hearing date T.B.D.*

*E. Application #21-08 INCARNATO – Bulk Variances for In-ground Pool w/ Patio & Detached Shed at 7 Oak Place, B: 46, L: 17, Zone: R-2; Received 7/15/21; Pending completeness review.*

*F. Application #21-09 LIOI – Bulk Variances for New Single Family Residence w/ attached garage at 19 Bodnar Street, B: 42, L: 6, Zone: R-5; Received 7/16/21; Pending completeness review.*

*G. Application #21-10 LEE – Bulk Variances for New Single Family Residence w/ attached garage at 20 Pfizer Road, B: 17, L: 3, Zone: R-1; Received 7/20/21; Pending completeness review*

**8. Executive Session:** None.

**9. Comments from Members:** Members Carton and Greenebaum asked that they receive hard copies of application reports as well as continue to receive hard copies of application documents. The Chair asked members to contact Mr. Mottola if they too wish to receive hard copies of both application documents and reports.

Chair Greenebaum recommended that members read the article in the NJ Planner regarding attending remote vs live meetings. Mr. Rago and certain Board members expressed their opinions on the matter.

Mr. Carton discussed with Mr. Brightly and Mr. Szabo impervious coverage that occurs beyond lots' property lines and the recent push by the Environmental Commission for use of rain gardens.

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

**11. Adjournment:**

Motion to adjourn: Mr. Carton. Second: Mr. McDowell.

Voice vote:

All members voted in the affirmative.

Chair Greenebaum adjourned the meeting at 10:17 pm.

Respectfully submitted,



Frank Mottola,  
Planning & Zoning Boards  
Administrative Officer

Keywords: BV-resolution-Phillips-Coleman-garage-Chestnut-Scott-Magdziac-Claremont-driveway