

PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – November 19, 2020
VIRTUAL ONLINE PUBLIC MEETING

1. Statement of Adequate Meeting Notice: Read by Chairman Graham at 7:35 pm.

2. Roll Call:

Present – Members Gardner, Graham, Horowitz, Kellogg, Macmillan, McQueen, Paluck and Thompson.

Absent – Mr. Simoff.

Board professionals present: Attorney Amanda Wolfe, Engineer Robert Brightly and Planner David Novak (from Burgis Associates, filling in for Board Planner John Szabo).

3. Minutes: Review draft minutes of 10/22/20 meeting:

Upon review, a motion to approve the minutes as drafted was made by Ms. Thompson and seconded by Ms. Kellogg.

Voice vote:

All eligible members voted in the affirmative.

4. Communications: 11/10/20 A. Suriano email transmittal of Council introduced ordinance #2020-1864 for Planning Board D26 review (*see 7B*).

5. Business of Visitors not related to agenda: None.

6. Old Business: None.

7. New Business:

A. Application #656 BOROUGH OF BERNARDSVILLE – Minor (3 lot) Subdivision, 271 Mine Brook Road; B:81 L:6, Zone R1-A; Received 10/6/20.

Appearing on behalf of the application were Borough Attorney John Pidgeon and Borough Engineer representative Robert Brightly. Mr. Brightly and the Board's Planner, Mr. Novak, were sworn by Ms. Wolfe.

Mr. Pidgeon introduced the application stating that the Borough recently purchased the subject approximately 30 acre property and is applying for a minor three lot subdivision. Proposed lot **6.01**, which has approximately 8.5 acres with an existing residential development the Borough does not wish to maintain, will be sold. Proposed vacant lot **6.03** has approximately 2.6 acres and will be offered for sale to adjoining property owners. Proposed lot **6.02**, which has slightly less than 19 acres and contains a small cottage, a barn and detached garage, will be retained by the Borough for recreation and open space purposes. If lot 6.03 is not sold to an adjoining property owner, it will be merged back into lot 6.02. Ultimately, lot 6.03 will disappear as it will be subsumed by either lot 6.02 or an adjoining property owner's lot. Because lot 6.03 will be undersized it requires a "durational" or temporary variance until it is merged. Mr. Pidgeon said lot 6.03 will not remain a

free standing lot and that the Borough is agreeable to a condition that would prohibit further subdivision of whichever lot it becomes part of. Proposed lot 6.01 requires an impervious coverage variance with a post-subdivision impervious area of 47,562 S.F., where a maximum of 27,005 S.F. is permitted. There are currently no specific development plans for the Borough lot 6.02.

Mr. Brightly discussed the minor subdivision plat he prepared for the Borough, describing the site and its environs. He shared his screen displaying the two sheet set of drawings dated 9/30/20. His office, Ferriero Engineering, did not prepare the survey upon which the plat is based. Checklist waivers were requested from the drawing scale requirement of 1" = 50' whereas (1" = 100' was used) and from the requirement to show topographic contours. Since no development is proposed at this time on any of the lots, Mr. Novak said the Board's Planner, Mr. Szabo, had no issues with granting the requested waivers. Although Ms. Gardner expressed concern over the absence of the topographic contours, none of the Board members objected to granting the requested waivers, thereby deeming the application complete. Mr. Brightly said that in addition to the reduction in lot size, the excessive impervious coverage on lot 6.01 is primarily due to the size and number of structures built on the lot. Mr. Brightly said that for lot maintenance purposes the Borough would seek from the buyer of lot 6.01 a temporary driveway easement north of the gate to be able to access lot 6.02 from the existing connected macadam driveway into the property from lot 6.01. A permanent driveway easement south of the driveway gate to Rt. 202 is envisioned to provide for public access into the site in the future. Ms. Kellogg opined and Mr. Brightly agreed that the existing ingress and egress driveways onto Rt. 202 would have to be enlarged before public use of lot 6.02 is initiated. This would involve a permit from the NJ Department of Transportation. Chairman Graham asked if the existing macadam drive into lot 6.02 could be brought south of the gate in order to increase lot 6.01's attractiveness for sale. It was acknowledged that lot 6.02 will require various improvements, including a new septic system, based on its eventual use and associated level of developed. Mr. Brightly could not confirm whether the cottage has electrical power service. He thought the existing barn, which requires a deficient side yard setback variance, could be maintained as a storage structure. Since it crosses the property line, the exiting macadam driveway into the site, as well as any future driveway into the site from the existing driveway on lot 6.01, needs a setback variance (10' required – 0' existing/proposed). Mr. Brightly reviewed lot by lot all of the required variances listed in the zoning chart on drawing sheet 1 of 2.

Questions/comments from the public

Jeffrey Miller, 311 Mine Brook Rd.: why a height variance for the existing residence on proposed lot 6.01 was included in the notice; could future condominiums be built on the lot; are lots 6.02 and 6.03 restricted from returning to residential use if Green Acres funds were used in obtaining the property.

Clair Miller, 311 Mine Brook Rd.: expressed concern regarding the impact of future development of lot 6.02 on the stream that runs through it and onto her property.

Renee Morton, 293 Mine Brook Rd.: expressed concern that surrounding residents would be impacted by future development on lot 6.02.

Brandon Ochs, 180 Round Top Rd.: as an adjoining property owner to lot 6.03, is he eligible to bid on its purchase and will he be notified of the Borough's request for bids.

As requested by Ms. Thompson, Mr. Novak affirmed that neither he nor the Board's planner Mr. Szabo in his 11/18/20 review memo, had any issues with granting the requested variances from a planning perspective. Mr. Novak added his opinion that the positives outweigh the negatives and support the granting of the variances. Chairman Graham asked that the resolution be written so that the merger of lot 6.03 with any other lot would not allow further subdivision of the lots if the existing lot cannot currently be subdivided.

A motion to approve application #656 as stipulated to and conditioned on the record was made by Ms. Thompson and seconded by Ms. Gardner.

Roll call vote:

All in favor: Members Gardner, Graham, Horowitz, Kellogg, Macmillan, McQueen, Paluck and Thompson.

Those opposed: None.

Ms. Wolfe will draft a resolution and have it reviewed by Mr. Pidgeon and Mr. Brightly.

B. D26 Master plan consistency review of introduced Ordinance #2020-1864 – Amend and supplement ordinance chapter #12 - ZONING to require recording of deed declarations for private stormwater management facilities; Council public hearing 11/23/20; PB review and consideration of draft Resolution #2020-18.

Borough Attorney John Pidgeon was in attendance for the Board's discussion and questions. Ms. Thompson suggested an "A" or "The" needs added at the start of **Section 1, Paragraph b.**, before the word "Private". Mr. Brightly explained that the purpose for requiring the recording of a storm water management (SWM) deed declaration is to alert subsequent owners of properties that SWM facilities exist on site and must be maintained. He stated an example of buyers of newly subdivided lots that were unaware that dry wells were existing on their lots and placed structures over them. Mr. Pidgeon clarified that owners of properties with existing SWM facilities would not be required by this ordinance to file a new deed declaration but are already required by ordinance to maintain any SWM facilities on their properties. Declarations would be added to deeds when properties are required to construct new SWM facilities or ownership is transferred. Per Mr. Brightly, the Borough has a simple annual inspection report form for use by property owners. His office already provides owners with Operation and Maintenance manuals as part of the SWM application review process required for new construction. The Board felt the ordinance language should be amended to clarify that the deed declaration requirement does not pertain to existing property owners, as such would be onerous if it did. It felt enforcement will be difficult if the ordinance is retroactive and that the requirement should apply only to new construction. Homeowners may not realize there is a drywell on their property and might therefore be unaware of the needed compliance. The Board also felt the Council should consider providing notice of the SWM requirements in an annual mailing from the Borough Tax Collector. Mr. Novak opined that the ordinance is not inconsistent with the master plan and stated that the Board can convey its expressed concerns about the ordinance as recommendations additional to its D26 master plan consistency finding.

The Board asked that the draft resolution prepared by the Board Attorney finding the ordinance not inconsistent with the master plan be amended to add its concerns and recommendations to the Council. A motion to adopt resolution #2020-18 as so amended was made by Ms. Paluck and seconded by Ms. Thompson.

Roll call vote:

All members voted in the affirmative.

C. Review of 11/19/20 Bills List.

Upon review a motion to pay the listed invoices in the amount of **\$5,062.50** was made by Ms. Thompson and seconded by Ms. Kellogg.

Roll call vote:

All members voted in the affirmative.

D. Consideration of Planning Board 12/10/20 meeting date change.

Mr. Mottola explained that when he drafted the 2020 meeting schedule he hadn't realized that the Hanukah holiday coincided with the Board's second scheduled meeting in December on the night of the 10th and asked the Board if it wished to cancel and reschedule that meeting or simply cancel it. The Board agreed to reschedule the December 10 meeting to December 17 should there be the need to meet.

8. Pending Reviews/Public Hearings/Applications: None.

- 9. Emergent Matters:** Mr. Horowitz wished to note that the RFP for the former Audi site at 65 Morristown Road appeared in today's Bernardsville News and, that the house on the corner of Mill Street and Claremont Avenue has been listed for sale. This residential property was rezoned into the downtown Claremont District and is directly adjacent to the Quimby Lane redevelopment zone, but was excluded from it. Ms. Thompson thought it recommendable that the Borough consider buying the property using open space funds if available.

10. Executive Session: None.

11. Business of Visitors, second opportunity: None.

12. Adjournment: The meeting was adjourned by Chairman Graham at 9:52 pm.

Respectfully submitted,



Frank Mottola, Planning & Zoning Boards
Administrative Officer & Recording Secretary

Keywords: 271-Mine-Brook-subdivision-Pidgeon-Brightly-ordinance-D26-stormwater-management