

# **MINUTES**

## **BOARD OF ADJUSTMENT**

### **TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY**

Regular Meeting

January 27, 2022

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM via Zoom virtual meeting service.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted on the Township website. The Agenda for the meeting, as well as instructions for public participation in the meeting, have also been posted on the Township website and sent to the newspaper of record. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

#### **Oath of Public Officers – Newly Appointed Members**

The oath of office was administered to the following member by Steven Warner, Esq. prior to the start of the meeting.

John Sincaglia – Alternate #1 – replacement of unexpired term to end 12/31/22

#### **Roll Call:**

Members present were Mr. Sullivan, Mr. Coviello, Mr. Nappi, Mr. Delia, Mr. Ringwood, Mr. Sylvester, Mr. Pereda and Mr. Sincaglia.

#### **Adoption of Minutes:**

A motion was made by Mr. Coviello, seconded by Mr. Ringwood, and carried 7-0 to adopt the minutes of the January 6, 2022 Reorganization Meeting as presented.

#### **Adoption of Resolution**

The firm of Schulman, Wiegmann & Associates was designated as Court Reporter, and the Resolution memorializing the same was adopted, on the motion of Mr. Delia, seconded by Mr. Nappi, and carried by unanimous roll call vote 7-0.

**Applications for Review:**

**CARRIED FROM OCTOBER 28, 2021:**

**App. 14-21: First Student, Inc., 40 Russo Place, Block 1901, Lot 40  
(previously 40 Russo Place, LLC)**

The applicant proposes to use the property as a school bus depot for parking of the school bus fleet, administrative offices, light maintenance of the fleet, and employee parking. The proposed use of the property is a conditional use as outlined in Section 7.1.5 of the ordinance, and the applicant is seeking a d(3) conditional use variance in addition to bulk variances including for minimum lot area. (LI-Zone)

Mr. Warner confirmed that the notice provided is sufficient and the Board has jurisdiction to hear the application.

Michael Oliveira, attorney for the applicant, stated that the applicant has met with the DEP regarding relocation of the stream on the property, has made some progress, but does not yet have approval from the DEP. The applicant is not able to proceed with the application at this time but is requesting temporary approval for the parking of 25 buses on the property for a period of six months.

Mr. Warner advised that the Board has the discretion and authority to grant this request but would require a stipulation from the applicant that the granting of approval does not obligate the Board to grant a variance in any future proceedings.

Mr. Oliveira advised that the applicant understands and is only requesting a temporary variance.

Brian Fitzgerald, Senior Vice President of First Student, Inc., was sworn and discussed the history of the company's use of property in Chatham, the leasing of the subject property and the current situation that led to the request for the temporary parking request.

Ahmed Osman, engineer, previously sworn, provided information regarding the discussions with the Soil Conservation District and the DEP. He presented Exhibit A-1 – Permitting Plan Set/Bus Parking Facility that will be submitted to the DEP. He anticipates a response within 90 days.

Mr. Oliveira stated that the applicant hopes to obtain the DEP approval within the next few months and then return to the Board for permanent approval of the project. The applicant is requesting temporary approval for 25 buses which will

fit on the site without going into any restricted area. They would like to come back to the Board in three months to provide a progress report.

Keenan Hughes, Township Planner, previously sworn, stated that the applicant should guarantee that there will be no disturbance of the DEP portion of the property.

Discussion took place and it was noted that any temporary use will be restricted to parking of buses and there will be no automotive repairs done on the site. There is no guarantee of permanent approval and any violation of the number of buses will terminate the temporary approval.

Mr. Oliveira agreed to the above and stated that the applicant is looking for other sites for temporary use in the event the DEP approval is not received in time.

Mr. Fitzgerald stated that any repairs will be done inside the building, not outside.

### **Open to Public**

The hearing was opened to the public.

Richard Leister, Environmental Commission, asked if the stream and wetlands area will be protected from leakage.

Mr. Osman stated that bus maintenance will be conducted inside the building.

Discussion took place regarding the maintenance of the buses inside the building and it was noted that activity is taking place on the site without Board approval.

Greg Cleghorn, representing First Student Bus Co., previously sworn, stated that approval was obtained from the zoning officer, Tom Bocko, in September 2021. That approval expired on December 31, 2021 and was extended by Mr. Bocko by document dated January 5, 2022, for 10 buses with servicing inside the building through April 18, 2022.

Michael Cline, representative of the applicant, previously sworn, presented Exhibit A-2 – Extension by Tom Bocko dated January 5, 2022.

Further discussion took place and it was suggested that the Board approve the use of the site for parking of no more than 25 buses until June 30, 2022, with maintenance permitted only inside the building for no more than 10 buses until April 18, 2022.

Mr. Oliveira stated that the applicant will agree to those conditions.

Mr. Warner reviewed the conditions of approval for temporary use.

A motion was made by Mr. Ringwood, seconded by Mr. Nappi, with respect to App.#14-21: First Student, Inc., 40 Russo Place, Block 1901, Lot 40 (previously 40 Russo Place, LLC) to approve the temporary use of the property with requested variances, subject to the conditions discussed and subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The roll call vote was 7-0 with Mr. Sullivan, Mr. Coviello, Mr. Nappi, Mr. Delia, Mr. Ringwood, Mr. Sylvester and Mr. Pereda voting in favor and none opposed.

The hearing of the application was carried to April 28, 2022 with no further notice required. Mr. Oliveira stated that the applicant will grant an extension of the time for which the Board to act on the application through April 2022.

**App.#20-21: Kim Cozic, 15 Oak Ridge Road, Block 2105, Lot 13 (R-15 Zone)**

Proposed installation of an in-ground pool and spa. The project also includes walls, a covered patio, walkways, relocated shed, fence, and deck extension. Relief is needed from Section 6.1.1B “Schedule of General Regulations” for exceeding the 10% permitted “other” and 25% permitted “total” lot coverage percentages.

Mr. Warner confirmed that the notice provided is sufficient and the Board has jurisdiction to hear the application.

Chris Cozic and Kim Cozic, applicants, were sworn and stated that they renovated their house in 2018 but at that time did not consider the addition of a pool. In light of the pandemic and the amount of time they are now spending at home they would like to create an environment that they and their family can enjoy. They are asking for a variance for lot coverage.

Jared Kest, landscape architect, was sworn, provided his educational and professional background and was accepted as an expert witness. Mr. Kest presented Exhibit A-1 – rendered site plan dated January 27, 2022 showing the existing conditions and proposed conditions with respect to landscaping, drainage, grading, pool and patio. Mr. Kest stated that the existing storm water system is in the front of the house and there is no plan to change that. He reviewed the proposed landscaping, tree removal and replacement and stated that the applicant will comply with the recommendations of the Environmental Commission. Mr. Kest

stated that he believes there will be no negative impact on the neighbors.

In response to questions from the Board, Mr. Kest stated that the average height of the canopy trees to be planted is 16-18' and of the evergreen trees is 12-16'. The excavated soil will be removed from the site and the soil for regrading will be topsoil. Mr. Kest provided details of the retaining wall and boulder wall.

Mr. Kest indicated the proposed location of the patio and pergola and stated that there will be no change to the existing driveway or walkway. The proposed increase in impervious coverage is from 23% to 34%.

In response to further questions from the Board, Mr. Kest stated that the existing 96 square foot shed is being relocated and the proposed location of the pool will preserve the lawn space used by the children for sports activities. The existing fence that belongs to the neighbors is on the applicants' property, but they do not intend to do anything about it. All lighting will be downward and there will not be any spillage. The applicant is not proposing to install fencing around the pool since it is not required because the property is fenced.

Discussion took place regarding the amount of impervious coverage being requested. Mr. Kest suggested that the impervious coverage can be reduced down to 30% by having a wood deck instead of a stone patio.

### **Open to Public**

The hearing was opened to the public.

Richard Wolff and Ria Wolff, 21 Oak Ridge Road, were sworn and stated that they are the neighbors, and they are concerned about noise. There presently exists two air conditioning units and a generator immediately adjacent to their house and the pool equipment will add to that noise and make it uncomfortable for them to sit outside. They also expressed concern about the number of trees to be removed.

Mr. Sullivan suggested that additional vegetation or fencing be used to reduce the amount of noise.

Richard Leister, Environmental Commission, asked if the retaining wall will be built before the trees are planted and if the drainage system is a green system.

Mr. Kest stated that the wall will be built first so there will be no effect on the trees and the drainage will be a green system.

The hearing of the application was carried to February 24, 2022 with no further notice required. Mr. Kest will redesign the project to reduce the impervious coverage. The applicant granted an extension of the time for the Board to act on the application through February 2022.

**CARRIED FROM NOVEMBER 11, 2021 WITH NO FURTHER NOTICE  
REQUIRED:**

**App.#15-21: Oz Custom Builders, LLC, 725 Mountain Ave., Bl. 2006, L. 32**

The applicant is seeking final major subdivision approval with variances to subdivide the approx. 5.96-acre property. The proposal is to demolish the existing residential dwelling and garage and subdivide the property into five lots with the existing church and parking lot to remain on proposed Lot 32.01 and single family residential dwellings to be constructed on proposed lots 32.02, 32.03, 32.04 and 32.05. Preliminary major subdivision approval was previously granted by the Berkeley Heights Planning Board.  
(R-15 Zone)

August Santore, attorney for the applicant, stated that the plans have been revised in response to concerns expressed at the prior hearing.

Catherine Mueller, engineer, previously sworn, described the changes to the engineering plans and presented Exhibit A-4 – revised detention basins.

**Open to Public**

The hearing was opened to the public for questions and comments.

Beverly Sonnenberg, 566 Plainfield Avenue, was sworn and made comments and raised questions regarding the revised detention basins. She stated that she is concerned about drainage and water getting into her basement. Ms. Sonnenberg also asked for assurance that her property would not be used as a cut-thru during construction.

Ms. Mueller stated that the view from Ms. Sonnenberg's property will now just be a fence. She explained how the drainage will work and advised that maintenance of the detention basins will be the responsibility of the homeowners' association in accordance with state regulations. Mr. Santore stated that fencing will be required during construction and there will be no need for anyone to go onto Ms. Sonnenberg's property.

Jerry Barter, neighbor, was sworn and stated that he is concerned about soil erosion on his property during construction.

Ms. Mueller discussed the measures that will be taken to protect the adjoining properties.

Kristen Castillo, 560 Plainfield Avenue, was sworn and raised questions and expressed concern regarding the drainage, number of trees being removed and the effect on her property.

Ms. Mueller explained how the detention basins are designed to collect water.

Bill Harrison, 539 Plainfield Avenue, was sworn and asked if the Township Engineer is okay with this design.

Tom Solfaro, Township Engineer, was sworn and stated that his office is still reviewing the revised drainage plan, but the amount of run-off from the property will be less.

John Forster, 87 Hampton Drive, asked about maintenance of the detention basins and if the new street will be a private road or if it will be turned over to the town.

Mr. Santore advised that the homeowners' association will be responsible for maintenance of the detention basins and the street will be a public road maintained by the Township.

Angus Chen, neighbor, asked what will be done to prevent water build up on Plainfield Avenue that will turn to ice in the winter. Mr. Chen also asked what protection the neighbors will have if the homeowners' association fails to maintain the basins and water ends up on the neighbors' properties.

Ms. Mueller stated that the design will comply with all state regulations, and she does not anticipate that it will make the condition of Plainfield Avenue worse.

Mr. Santore advised that the Township will enforce the obligations of the homeowners' association and the developer.

Jon Hoeffler, 573 Plainfield Avenue, was sworn and stated that he is concerned about the retaining wall behind the church since it seems like there will be more water.

Ms. Mueller explained how water will flow to the existing storm drain and how it will be collected into the system.

A motion was made by Mr. Delia, seconded by Mr. Sylvester, and carried by voice vote 7-0, to authorize the Board to continue the hearing past 10:30 pm to 11:30 pm.

Kristen Castillo asked about the perc tests on the property.

Ms. Mueller explained how the perc tests are conducted and how the information obtained is used.

Alvero Medeiros, 21 Twin Falls Road, asked about the tree removal and replacement plan.

Mr. Santore explained how the tree replacement calculations are done and a plan developed. He stated that Mr. Bocko will do a detailed analysis and develop a plan and the builders are required to follow the plan. There will be no certificate of occupancy issued without compliance.

The hearing of the application was carried to March 24, 2022 with no further notice required. The applicant granted an extension of the time for the Board to act on the application through March 2022.

### **Open to Public**

The hearing was opened to the public for questions and comments. There were no members of the public who had questions or comments.

### **Adjournment:**

A motion was made by Mr. Ringwood, seconded by Mr. Nappi, to adjourn the meeting. The voice vote was unanimous, and the meeting was adjourned at 11:32 PM.

Regina Giardina, Secretary Pro Tem