

**BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
February 7, 2011 Minutes  
7:30 PM PUBLIC MEETING**

1. Adequate Meeting Notice: Read into the record by Chairman Biba.

2. Roll Call: Members present: Chairman Biba, Vice Chairman Greenebaum, Members: Negri, Dee, Omlor, Peterson, English, Kramer, Lincoln and Sailliard.

Absent: Members Omlor and Robertson

Professionals Present: Attorney John Lynch, Engineer Robert Brightly and Planner P. David Zimmerman.

3. Approval of Minutes: January 4, 17 and 24, 2011

Motion to approve three sets of Minutes as amended: Mr. Greenebaum

Second: Mr. Lincoln

Voice Vote: All eligible members are voting in the affirmative.

4. Communications:

New Jersey Planner, December 2010 – January 2011

Court Reporter Services: Mr. Biba announced that due to budget restraints the Board of Adjustment will no longer have available the services of a Court Reporter.

5. Resolutions: None

6. Pending Applications:

➤ Application 10-6: Nixon Residence : 161 Campbell Road  
B:8 L: 9 Continued from December 6. Extension granted.

Mr. Liberman called his first witness, Planner Tamara Lee. Ms Lee was accepted as an expert. Testimony commenced with the subject of legal briefs provided by both Legal Counsel.

Chairman Biba and Mr. Lynch acknowledged receipt of the briefs, but noted that they agreed not to distribute copies of the

Board members. The Board will vote only on the arguments presented.

Mr. Liberman then proceeded to question Ms. Lee regarding her research of the property and the information she gathered from OPRA requests. Exhibit O-2 was marked, titled History of Site Development.

Ms. Lee noted that six variances are needed, but three are of real concern for they are slope variances and to accomplish this, the applicant needs to satisfy the positive and negative criteria. Later Ms. Lee addressed both criteria.

Other concerns expressed included:

Unrealistic maintenance of proposed storm water system, regardless of Deed Restriction.

Design and construction of site does not minimize steep slope impact, rather it is contrary. Because the house is tucked into the slope it requires high retaining walls which create drainage issues.

Unnecessary side load garage, better design with lesser site impact would have been to have the garage under the house.

Entered Exhibit 0-3: Local Areas House Sizes and  
Exhibit 0-4: "Substantially" small house calculations

Point emphasized for Exhibit 0-4 is that the home could be further reduced with lesser count bedroom and bath count therefore reducing septic size. The extent of the variances is because the applicant wants to build a large home.

Questions from Board clarified if there is a need from NJDEP to build this home and the answer is that NJDEP does not need to issue a permit. Ms. Lee was questioned if she examined the local homes in the neighborhood and her response was no.

Ms. Lee also noted that another detriment is the spill way. Twenty years ago the planning Board referenced that it be repaired and NJDEP approved replacement. Substantially now years later with this application it is still not addressed.

Time is 8:35 PM. Mr. Bisogno cross examined Ms. Lee. Mr. Bisogno questioned Ms Lee's expertise with engineering references to slopes and emphasized that if hardship is based on slope this lot suffers with slope topography. Mr. Bisogno noted that the proposed house per tonight's exhibit is the third smallest in the neighborhood. Mr. Bisogno clarified that NJDEP has no jurisdiction for the home because it is outside the wetlands transition permit.

Time is 8:59 PM. Cross examination concludes.

There were no public questions.

Professional questions:

Mr. Zimmerman noted that the plan refers to the removal of 31 trees with eight replacements. Applicant will contribute to the Borough's tree fund for the loss trees. Mr. Zimmerman questioned Ms. Lee of her opinion. Ms. Lee stated that she was aware of the contribution, but has concern that the removal of so many trees will have a huge impact to natural habitat and therefore excess removal is a detriment.

Mr. Greenbaum noted if this is a self imposed hardship then any size home would require a variance.

Ms. Lincoln questioned Mr. Brightly regarding clarification of the storm water maintenance manual and the enforcement procedures implemented from previous applications.

Time is 9:25 PM. Ten minutes recess.

Mr. Lieberman's next witness called is neighbor Michael Iovino, 171 Campbell Road. Much of the testimony referenced Mr. Nixon's annual offer to sell the property to Mr. Iovino. [Annual offer was stated during Ms. Lee's testimony] Mr. Iovino

answered that only one offer was extended in early 2000 for \$400,000 and the project would be shovel ready. Mr. Iovino expressed no interest with the offer.

Mr. Bisogno cross examined Mr. Iovino affirming that Mr. Iovino purchased his home from Ramm Associates, which Mr. Nixon was a former partner in 1989. Also, the offer in early 2000 was extended by Mr. Nixon's former partner Rich McGim and later again by Mr. Nixon. Mr. Iovino acknowledged dual offers.

No further questions.

Next witness called by Mr. Lieberman is Mr. Simon Aassad, 141 Campbell Road. When Mr. Aassad purchased his home in 2005 from Mr. and Mrs Nixon the application lot was for sale. Six months later Mr. Aassad expressed interest to purchase the lot, but later retracted his offer to purchase.

No further questions of the witness and no cross by Mr. Bisogno. Opposition counsel rests his case.

Mr. Bisogno called two rebuttal witnesses. First witness called and sworn is Mr. David Nixon. Mr. Nixon stated that he and wife resided at 141 Campbell Road for twenty five years and sold to Mr. Aassad in 2005. Between 2007-2008 there was email communication with Mr. Aassad regarding his interest with the property, but later Mr. Aassad expresses no interest with the property.

Mr. Bisogno questioned communication with Mr. Iovino regarding his interest with the property. Mr. Nixon stated that between 2003 to present, the property had been on and off the market several times. Every time after relisting the parcel a call was made to Mr. Iovino. Between six to eight calls were extended regarding interest with the parcel. After the last conversation, Mr. Iovino's response was that he will not have to buy it.

No further questions.

Next witness called is John Madsen, PE. Mr. Lieberman objected stating that it was inappropriate to put case in chief in rebuttal and testimony be stricken. Mr. Biba noted the objection on the record if there is an appeal.

Mr. Madsen is sworn and accepted as a witness. Mr. Madsen testified primarily to the slope issues and stated that it is his opinion that this does qualify for a C1 Hardship variance. Factors leading to the location of the home is that the location had been previously disturbed, it is appropriate for architectural details and consideration of the neighboring properties.

No further questions for the witness.

Public comments. Ms. Sherry Frawley, Environmental Commission Chair refutes the position of the applicant that NJDEP acknowledges the house with the State Permit.

Mr. Bisogno responded and it was agreed that given the hour this hearing will continue February 22. Extension was granted by the applicant.

Time is 10:57PM

7. New Applications: None

8. Old Business: None

9. New Business: Previously announced the discontinuation of Court Reporter Services.

10. Bill List: Authorize the payment of Bills totaling \$27,861.25

Motion: Mr. Negri

Second: Mr. Greenebaum

Roll Call: Aye – Biba, Greenebaum, Negri, Dee, Peterson, English, Kramer, Lincoln and Sailliard.

Nay – None

February 7, 2011  
Bd of Adjustment Minutes

11. Comments from Members: None

12. Comments from Staff: None

13. Adjournment: Time is 11:00 PM

Motion to adjourn: Mr. Negri

Second: Ms. Dee

Voice Vote: All members present voted in the affirmative.

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Respectfully submitted,

Teresa Lyons

Keywords:minutes-board-of-adjustment-application-10-06-nixon-161-campbell-road