

**BOARD OF ADJUSTMENT
BOROUGH OF BERNARDSVILLE
February 22, 2011 Minutes
7:30 PM PUBLIC MEETING**

1. Adequate Meeting Notice: Chairman Biba read into the record the Open Public Meeting Law Statement.
2. Roll Call: Members present: Chairman Biba, Vice Chairman Greenebaum, Members: Negri, Dee, Peterson, English [arrived 8:03 PM], Kramer and Lincoln
Absent: Messers: Omlor and Salliard
Professionals present: Attorney Lynch, Engineer Brightly and Planner Zimmerman.
3. Approval of Minutes: None
4. Communications: None
5. Resolutions: None
6. Pending Applications:
 - Application 10-07: Roman Graure, 607 Mine Brook Road B: 89 L: 9 Continued from January 4. Requested adjournment to March 21. Extension has been granted.
 - Application 10-6: Nixon Residence : 161 Campbell Road B:8 L: 9 Continued from February 7. Extension granted.

Mr. Bisogno reported he has rebuttal witnesses. First recalled is Mr. John Peele, Environmental Specialist. Mr. Peele addressed the concerns previously raised regarding threaten and endangered species. He noted that NJDEP's review of the project did include threaten and endangered species.

Mr. Peterson questioned if NJDEP visited the site? Mr. Peele answered yes. Ms. Lincoln wanted clarification that NJDEP did not approve of the house. Mr. Peele stated that it is not within NJDEP's

purview to approve the design of the house, but was made aware of the proposed home, including number of bedrooms and baths.

Next Mr. Peele noted that three applications were mailed to NJDEP, they are:

LOI, Combination General Permit # 10B [driveway, transition area, house footprint and grading] and Guide Rail.

Next witness called is applicant Mrs. Nance Nixon. Marked as Exhibit A14 is "Comparison of House Size {Source: Bernardsville Tax Records}, prepared by Nance Nixon. Ms. Nixon refuted Exhibits 03.04 & 05 prepared and submitted by Tamara Lee. Ms. Nixon reported that Exhibit -- contains information collected from the office of the Tax Collector and Tax Assessor. It shows that the average square footage of surrounding homes is 6,500 sq ft. The proposed home is 3,804 square feet. Therefore the average square feet of surrounding homes are 71% larger than proposed home.

This concluded Ms. Nixon's testimony. Mr. Bisogno had no other witnesses.

Public comments:

Sherry Frawley, Environmental Commission – Environmental Commission feels that the project is too intense for sensitive parcel.

Opposing Counsel Mr. Stuart Lieberman.
Time is 8:00 PM.

Mr. English arrived 8:03 PM

Mr. Lieberman challenged C1 Variance and cited example, criteria and case law of Kaufman -v- Warren Township. In conclusion, Mr. Lieberman requested that the Board reject the application.

Mr. Bisogno closed with brief history of property, the satisfaction of the C1 variance by the application noting it established positive and negative criteria and that the application meets and exceeds the Borough's Storm water Management Regulations.

The case rested at 8:40 PM.

Mr. Lynch presented the legal issues of the case. Mr. Biba clarified the voting eligibility.

Both Legal Counsel agreed that the Board be polled.

Aye: Negri and Greenebaum

Nay: Peterson, Lincoln, English, Dee and Biba.

Mr. Lieberman requested that a vote be taken.

Discussion ensued and it was agreed that the hearing will reconvene with a new plan, not a new application.

Board then voted to accept an amendment to the current application with a new house design.

Aye: Biba, Greenebaum, Negri, Dee, English and Lincoln

Nay: Peterson

9:40 PM. Chairman Biba called a ten minutes recess.

Time is 9:50 PM

Hearing will continue without further notice on June 6, 2011.

7. New Applications:

- Application 10-09: Rosin Residence
71 Skyline Drive, B: 9 L: 5.07

Time is 9:55 PM

Mr. Rosin and his Engineer Allen Klein were sworn and accepted for the application. Mr. Rosin reported the need to reconstruct a retaining wall which supports and outdoor pool and cabana. The pool facilities are located in a level area behind the house which has been created by a substantial retaining wall. Approximately 200 feet long, which protects the pool area from a steep drop off to the rear of the property. The retaining wall is unstable and along with the cabana located on the wall, is in danger of sliding down the steep embankment.

Proposed is to remove and replace the retaining wall with a new wall in the same general location. The cabana now rest upon the existing wall therefore it will dismantle in the process. Applicants also propose to construct a new 12x12 foot two level structure in the same general locations which will contain the replacement cabana on the upper level and an equipment storage room on the lower level. The cabana will include a changing area, bathroom, and wet bar.

Board concerns addressed impervious surface and steep slope. However, the Board concluded that the property suffers hardship and practical difficulties due to topographic conditions of the lot and the presence of existing site improvements which are sufficient to support granting of the relief requested.

Marked as Exhibit A1 is Sheet A02 . Mr. Klein presented plans /drawings submitted with the application.

No public comments or questions were raised.

Board was polled and consensus was favorable with conditions.

Motion to approve with conditions: Mr. Negri

Second: Mr. Peterson

Roll Call:

Aye - Biba, Negri, Dee, Peterson, English, Lincoln and Kramer

Nay – Greenebaum and Lincoln

Time is 10:55 PM

➤ Application 10-10: Byrne Residence

103 Chestnut Avenue, B: 35 L: 3

Due to late hour, matter will be heard later in the evening on March 7.

Extension was granted.

8. Old Business: None

9. New Business: None

10. Bill List: None

11. Comments from Members:

12. Comments from Staff:

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, Administrative Officer

Keyword: minutes-board-of-adjustment-application-10-06-roman-graure-607-mine-brook-road-application-10-06-161-campbell-road-application-10-09-rosin-residence-71-skyline-drive-application-10-10-byrne-103-chestnut-avenue