

BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
**Minutes – December 5, 2022**  
VIRTUAL ONLINE MEETING

**1. Statement of Adequate Meeting Notice:** Read by Chair Greenebaum at 7:33 pm.

**2. Roll Call:**

Present – Members Greenebaum, Kramer, Loeffler (arrived 7:59), Sailliard and Traynor.

Absent – Members Dello Russo, McDowell, Sedlak Slocum and Reynolds.

Board professionals present: Attorney Louis P. Rago, Engineer Robert Brightly and Planner John P. Szabo, Jr.

**3. Approval of Minutes:**

Review of draft minutes of 11/21/22 meeting.

Upon review, a motion to approve the minutes as presented was made by Mr. Traynor and seconded by Mr. Sailliard.

Voice vote:

All eligible members voted in the affirmative.

**4. Communications:** The Chair acknowledged the following correspondence:

A. The New Jersey Planner, September/October 2022, VOL. 83, No. 5.

B. Revised draft 2023 Board of Adjustment meeting schedule.

It was noted that the draft schedule had been revised since the last meeting, wherein the Monday June 19<sup>th</sup> meeting had been changed to Tuesday, June 20<sup>th</sup> at the Chair's suggestion. It was asked that any additional change suggestions be relayed to Mr. Mottola prior to the 1/17/23 meeting, at which the schedule will be adopted.

**5. Old Business:** Preparation of Annual Report to Council and Planning Board - tabled from 11/21/22 meeting.

Chair Greenebaum asked that Mr. Mottola send an email to the alternate members seeking a volunteer to prepare the 2022 annual report.

**6. New Business:**

A. Application #22-05 CAROLAN – Bulk Variance for New Detached Barn on Single Family Residential Lot; 3 Crownview Lane, B: 5, L: 11, Zone: R-1-10; Deemed incomplete 11/8/22; Waiver requests and completeness determination scheduled to be heard 12/5/22.

Appearing on behalf of the application were co-owners Richard and Christine Carolan and engineer Richard Vollmar. Mr. Vollmar was sworn and qualified. Mr. and Ms. Carolan were sworn.

Exhibits introduced:

**A1** – 2/9/96 Lot Development Plan, Block: 5 Lot: 3.02 by Yannaccone Associates, Inc.

Mr. Mottola confirmed for Mr. Rago that proper notice had been made. Chair Greenebaum reviewed with Mr. Vollmar the 11/8/22 planning/completeness report prepared by Mr. Szabo, specifically the requests for waivers for determination of completeness.

The first four items identified in Mr. Szabo's report as not provided were not waived by the Board and were agreed by the applicant to be provided on revised drawings. For report item #5, the Board agreed that the extent to which trees were on the submitted plan was adequate. A motion to grant a waiver for checklist item #9-9.2ii and deem the application complete pending the provision of checklist items 9-9.2c, 9-9.2g, 9-9.2p and 9-9.2dd as identified in Mr. Szabo's report was made by Ms. Kramer and seconded by Mr. Traynor.

Voice vote:

All members voted in the affirmative.

Mr. and Ms. Carolan jointly explained the application stating that they wish to erect a detached barn on their large property behind their house. It will not be used for living purposes, only storage such as Mr. Carolan's bikes and possibly a car.

Chair Greenebaum noted that the application is seeking approval to further exceed the allowable impervious coverage in that the existing development already exceeds the limit of 24,112 S.F. There is currently 26,641 S.F. of impervious coverage and 29,134 S.F. is proposed. He said the town takes impervious limits pretty seriously and asked the applicants why such an overage is necessary and what they propose to ameliorate the situation.

The applicants stated they did not understand what the Chair was asking regarding ameliorating impervious coverage in light of their proposal. Mr. Vollmar responded that they are proposing to install six seepage pits, three on each side, as mitigation for the increase in impervious coverage stormwater runoff. The seepage pits will collect all of the stormwater that runs off of the proposed barn. He said that possibly additional seepage pits could be added for the existing residence for further mitigation. However, he said he would want to know if the seepage pits indicated on exhibit **A1** were actually installed. Chair Greenebaum asked whether any of the existing driveway shown on **A1** could be removed and asked for more specificity on what the proposed barn will be used for. Ms. Carolan responded that the driveway is only 8' wide. Mr. Carolan responded that the barn will be used for more than a car and a bike. He said he was a professional athlete and has an extensive collection and usage of stuff i.e., bikes, bike parts, equipment, tools, awards, etc. and a large collection of memorabilia. He wants to have a space where he can work on his hobby but also store many things has no room for in their main house, which he said has a four car garage. Informed of the four garage space limit, he said he wouldn't be parking his everyday cars in the barn. Chair Greenebaum explained that they are before the Board because the zoning ordinance does not permit the proposed barn due to impervious coverage limits, but that the Board can grant variances when good cause is presented as to the need and advancement of zoning purposes. It is not just a question of want. The proposed development must be something that is within the characteristic of the town, that is good and

useful for the town and does not diminish the zoning ordinance.

Ms. Kramer commented that the applicants do not seem to understand what is required of such an application and suggested that they could possibly benefit from the assistance of an attorney, or, as Mr. Traynor added, a professional planner. She said she suggests this because the general public is not familiar with the process of making application to land use Boards. Mr. Carolan responded that he is only asking to put up a simple building in which he will store things and work in. It will mirror the home's aesthetics and would be as expected to look for such a building. Many of his neighbors have the same type of structures on their properties. Using drawings submitted with the application and displayed by Mr. Vollmar, Mr. Carolan went into explaining the proposed building's features, what may be kept inside and its potential uses: automotive cycling projects; tools and equipment; a tractor or two and other yard related equipment (because he has a seven acre property); storage cabinets; a desk and a couch; an extensive collection of stored and displayed memorabilia and artwork. The space would also be used for exercise and training equipment. There will be a bathroom and he will hang out there with friends that come by. The barn will not be used for business or commerce.

Chair Greenebaum confirmed with Mr. Mottola that the applicant's public notices included catch all language and informed the applicants that they will need a second variance to store cars in addition to the four they already keep on the property. Responding to the Chair's questions why the building needs to be so large; what if they could only have 600 S.F. and why they don't consider Ms. Kramer's suggestion, the applicants responded that 600 S.F. would not be large enough for all the stuff they have. They collect things and might collect a lot more. They buy any have things and need a place to put them on their property. They did not understand why anyone would care what they do on their own property, in their own building and why the Board would get to decide how much they can have and store. The current development is already over the zoning limit but somehow got approved. There is adequate land, the building will be beautiful and no one will be able to see it on their property. They are improving the property, not making it worse. They do not understand why they would need an attorney, having already spent thousands of dollars on the application. They further complained that they had provided everything they had been asked for and were not sufficiently informed, or informed in a timely manner by Mr. Mottola of what's needed. To try to illustrate the purpose of zoning regulations, Mr. Traynor gave a hypothetical, "what if" example of one of their neighbors proposing to build something not allowed by the zoning ordinance that would be obtrusive to them.

Chair Greenebaum commented that it is their decision whether or not to get professional advice to help with their application. Ms. Kramer's suggestion was only meant to be helpful because a lot of applicant's like themselves don't know the process. It was not meant for them to have to spend more money. Under the Municipal Land Use Law the Board needs to weigh the positive and negative criteria in deciding an application and that a land use professional could help them present that criteria. There are certainly negative criteria associated with exceeding allowable lot coverage and they have not presented any evidence that doing so in this case will be mitigated. He said the Board can vote on their application tonight if they wish. The applicants continued to insist that they could not understand why the Board would want to block them from building the barn they're requesting.

Mr. Vollmar joined the conversation and referenced a suggestion in the Environmental Commission's 12/5/22 report suggesting a portion of the driveway on the southwest side of the

property could be removed to offset the impervious coverage created by the barn and perhaps that would eliminate the need for a coverage variance. He asked if they would need Board approval if they proposed no increase in the current (existing nonconforming) 26,000 S.F. of impervious coverage. Chair Greenebaum opined that unless the current coverage was granted by the Planning Board, they would still need a variance because the existing coverage was never approved, not to mention the matter of wanting to garage more than the allowed four cars. It was Mr. Brightly's recollection that a smaller house previously existed on the lot, going back to the late 1990's. He said that Yannaccone engineered the subdivision and that he would have the file in storage and could do some research on it. Mr. Vollmar indicated on exhibit A1 the outline of a smaller residence-shaped structure that is marked for removal. He said that positive criteria would include; no wooded areas being affected; avoiding the conservation easement; and, no impacts to steep slopes. If the lot had been created with the minimum 10 acres, a variance would not be needed to build the proposed 1,998 S.F. barn. Usage of the lot is further reduced by the 52,000 S.F. conservation easement. He thought it may be possible to revise the application whereby there would be no increase in impervious coverage beyond what currently exists by reducing existing coverage equal to that of the proposed barn. They could agree to that as a condition of approval. Chair Greenebaum thought that might be a good alternative but that the Board would need to see revised plans. Mr. Brightly confirmed that all driveway materials are considered impervious, including gravel. He added that the area of the conservation easement is included in the impervious coverage calculation so its existence does not increase the coverage percentage. Mr. Carolan replied that regardless, that part of his property is of no use to him.

Based on Mr. Vollmar's comments, Mr. Rago suggested that Mr. Vollmar confer with Mr. Brightly about amending the application and that the hearing be carried to a future date. He didn't see the application being approved tonight and advised Mr. Vollmar that he thought the proposal he had presented was reasonable and that he should talk with his clients about pursuing it if they are so inclined. Mr. Carolan stated that they were hoping this was going to be a reasonable and easy process, and not have to hire attorneys as suggested by the Board.

At approximately 8:37 pm, Mr. Traynor noted that Mr. and Ms. Carolan had abruptly left the virtual hearing without explanation. Mr. Vollmar apologized for his clients' testiness. He said he will assist them as much as possible if they wish to proceed. He will pursue with Mr. Brightly ways to amend the application to have zero increase in impervious coverage, or close to zero. Ms. Kramer felt that the Board was trying to be helpful and that they could have reached agreement with the Board on this application. She asked that Mr. Vollmar relay this to his clients.

In consultation with Mr. Rago and Mr. Szabo, the Board agreed that the best way to conclude this hearing would be to dismiss the application without prejudice. If the applicant wishes to re-file the application de novo they could do so by letter, with revised drawings and application forms. They would have to re-serve notice and supplement their escrow account, but would not have to pay a new application fee. Mr. Mottola confirmed that any remaining escrow funds in the current account would not be automatically returned to the applicants; the applicants would have to request the refund. He also asked that Mr. Vollmar be the point person if the application is filed anew. Per the Board's request, he will send a link to the meeting recording to Mr. Vollmar. Mr. Rago requested that the applicant provide the Board with a written notice if they decide not to proceed with the application. A motion to dismiss the application without prejudice but with the

allowance for reinstatement by letter, with revised drawings and application forms and without the payment of a new application fee, was made by Mr. Traynor and seconded by Mr. Sailliard.

Roll call vote:

All in favor: Members Greenebaum, Sailliard and Traynor.

Those opposed: None. Those abstaining: Ms. Kramer.

**B. Review of 12/5/22 Bills List w/ Invoices.**

Upon review, a motion to pay the listed invoices in the amount of **\$6,140.00** was made by Mr. Traynor and seconded by Mr. Sailliard.

Roll call vote:

All members voted in the affirmative.

**7. Pending Applications: The Chair noted the following applications and their status:**

*A. BOA Application #22-03 MEGALLA-SCHEID – Bulk Variances for Detached Accessory Structures for Single Family Residence at 601 Mine Brook Road, B: 90, L: 10, Zone: R-2; Received 6/16/22; Deemed incomplete 8/15/22; Awaiting supplemental application documents.*

*B. BOA Application #22-04 MADDALI – Bulk Variances for Detached 3-Car Garage for Single Family Residence at 10 Chapin Road, B: 3, L: 14.03, Zone: R-1-10; Received 6/16/22; Deemed incomplete 8/15/22; Waiver requests, completeness determination and public hearing scheduled for 1/17/23.*

**8. Executive Session: Matter of ongoing litigation re NJAW Fenwick Tank denial appeal.**

Chair Greenebaum read on the record Board of Adjustment Resolution #EX 03-22 for the purpose of opening an Executive Session. A motion to close the public meeting and reconvene in executive session was made at 8:59 pm by Mr. Traynor and seconded by Ms. Kramer.

Roll call vote: All members voted in the affirmative.

*It is anticipated that the matters discussed in closed session may be disclosed to the public upon determination of the Board that the public interest will no longer be served by such confidentiality.*

A motion to close the executive session and reopen the meeting to the public was made at 9:23 pm by Mr. Traynor and seconded by Ms. Kramer.

Voice vote: All members voted in the affirmative.

**9. Action on Matters Discussed in Executive Session: None.**

**10. Comments from Members: Upon request by the Chair, Ms. Loeffler agreed to preparing the 2022 annual report. Discretion should be exercised in reporting on the ongoing NJAW litigation.**

**11. Comments from Staff: None.**

**12. Adjournment:**

Motion to adjourn: Mr. Sailliard. Second: Mr. Traynor.

Chair Greenebaum adjourned the meeting at 9:26 pm.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Frank Mottola', with a large, stylized initial 'F'.

Frank Mottola,  
Planning & Zoning Boards  
Administrative Officer

Keywords: Carolan-Vollmar-Crownview-annual-report-executive-session-litigation-NJAW.