

BOARD OF ADJUSTMENT  
BOROUGH OF BERNARDSVILLE  
**Minutes – November 21, 2022**  
VIRTUAL ONLINE MEETING

**1. Statement of Adequate Meeting Notice:** Read by Chair Greenebaum at 7:34 pm.

**2. Roll Call:**

Present – Members Dello Russo, Greenebaum, Kramer, McDowell, Sailliard, Slocum and Traynor.

Absent – Members Loeffler, Reynolds and Sedlak

Board professionals present: Attorney Louis P. Rago and Engineer Robert Brightly.

**3. Approval of Minutes:**

Review of draft minutes of 8/15/22 meeting.

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

Voice vote:

All eligible members voted in the affirmative.

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

**A. 10/26/22 Boswell Engineering extended services proposal w/10/31/22 G. Diaz, PE work description backup email re: Water systems consulting for NJAW PW appeal litigation.**

The Board acknowledged and discussed that Boswell Engineering had already exceeded its original NTE services proposal of \$6,000 by more than \$2,000 and is now requesting approval of an additional \$10,000 in fees to continue its consulting services for the subject ongoing litigation. Chair Greenebaum stated that the Borough Administrator would have to rule on whether or not the Borough should pay the contract overage and the Council would have to approve the additionally requested \$10,000. He said that he had alerted the Mayor and Council at the start of the litigation as to the need for funds in the range of \$20,000 to \$30,000 to defend the Board's denial of the NJAW application. He reviewed the description of services received from Boswell and provided to the Board. The Board agreed that no more than a total of \$16,000 should be authorized, and should include the all of the overage of the originally authorized \$6,000 amount. Responding to Mr. Slocum, Mr. Rago said there may be an opportunity to ask the co-litigants to share the cost of Boswell's services if it can be done legally and that he would approach them regarding same. The Board agreed to further discuss this matter in Executive Session.

**B. The New Jersey Planner, July/August 2022, VOL. 83, No. 4.**

**C. Draft 2023 Board of Adjustment meeting schedule.**

Chair Greenebaum suggested that the Monday June 19<sup>th</sup> meeting date be moved to Tuesday, June 20<sup>th</sup> in recognition of the Juneteenth holiday. Mr. Mottola will revise and resubmit the draft schedule for the next meeting.

**5. Old Business:** None.

**6. New Business:**

**A. Preparation of Annual Report to Council and Planning Board.**

At the Chair's request, this matter was tabled to the 12/5/22 meeting.

**B. Review of 9/21/22 Bills List with Invoices:**

Upon review, a motion to pay the listed invoices in the amount of **\$17,062.25**, pending approval of additional funds for services performed by Boswell Engineering, was made by Mr. McDowell and seconded by Ms. Kramer.

Roll call vote:

All members voted in the affirmative.

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

**A. Application #22-01 DAWNLEIGH LLC** – Request for D68 Certificate of Non-conforming Use 1 Dawnleigh Lane, B:67, L:8, Zone R-4; Received 3/8/22; Deemed incomplete 5/12/22; Application withdrawn 10/7/22.

**B. 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.

**C. 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; Awaiting supplemental application documents.

**D. 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.

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

Chair Greenebaum read on the record Board of Adjustment Resolution **#EX 02-22** for the purpose of opening an Executive Session. A motion to close the public meeting and reconvene in executive session was made at 8:01 pm by Mr. McDowell 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 8:39 pm by Mr. McDowell and seconded by Ms. Kramer.

Voice vote: All members voted in the affirmative.

**9. Action on Matters Discussed in Executive Session:**

A motion to approve increasing Boswell Engineering's NTE consulting fees related to the NJAW litigation from \$6,000 to \$16,000 was made by Mr. McDowell and seconded by Mr. Slocum. Mr. Rago will approach the two co-litigant objectors in the case about sharing this costs.

Roll call vote:

All members voted in the affirmative.

**10. Comments from Members:**

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

**12. Adjournment:**

Motion to adjourn: Mr. McDowell. Second: Mr. Traynor.  
Chair Greenebaum adjourned the meeting at 8:43 pm.

Respectfully submitted,



Frank Mottola,  
Planning & Zoning Boards  
Administrative Officer

Keywords: annual-report-executive-session-NJAW-Fenwick-litigation-Rago-Boswell.