

PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – October 13, 2022
VIRTUAL ONLINE MEETING

1. **O.P.M.A. Statement:** A statement of adequate meeting notice and adherence to the state mandated emergency remote meetings protocols, as set forth on this meeting's web-posted agenda, was read by Vice Chair Jeffrey Horowitz at 7:31 pm.

2. **Roll Call:**

Present – Members Gardner, , Horowitz, Kellogg, McQueen, Simoff and Thompson.

Absent – Members Graham, Macmillan and Paluck.

Board Professionals Present: Attorney Steven Warner, Planner John Szabo, Jr. and Engineer Robert Brightly.

3. **Minutes:** None.

4. **Communications:** 10/12/22 Memo by J. Szabo, Jr., PP. re: Quimby Lane Redevelopment.

5. **Business of Visitors unrelated to the agenda:**

Ms. Kathy Peachey, 70 Chilton St.: Sought clarification as to whether affordable housing developers are afforded more leeway by towns in terms of zoning compliance than other developers; if it makes any difference to the town whether residential developments are rentals or for sale; and when it is appropriate to comment on Planning Board proceedings. Mr. Warner answered that zoning regulations apply equally to all developers and that it is not within the Planning Board's purview to consider the monetary aspects of an application to which she referred. He added that the only appropriate time to comment on applications is during the public hearings at which they are considered by the Board. Mr. Warner further explained that if they are comments having to do with an ordinance the Board is reviewing for master plan consistency, the forum for those would be at the public hearings held by the Borough Council when considering the adoption an ordinance. Mr. Szabo expanded upon the response explaining how municipalities must follow the state's Municipal Land Use Law in matters regarding planning, zoning and the hearing of development applications.

6. **Old Business:**

A. Continued 40A Master plan consistency review of Introduced Ordinance #2022-1933 re: Amendment to Quimby Lane Redevelopment Plan; Introduced 9/12/22; Public hearing scheduled for 10/11/22; Planning Board review held 9/29/22, no action taken; Board to reconsider 10/13/22 based on 10/11/22 review by Council and 10/12/22 memo by Board Planner Szabo.

Mr. Szabo outlined the nature of his discussion with the Council regarding amending the Quimby Lane Redevelopment Plan (QLRP) and what he feels would be an appropriate solution. He shared his screen for the purpose of reviewing his 10/12 memo to the Board, which provided the additional information the Board requested when it last reviewed the introduced ordinance. The new changes are limited to only the zoning requirements of subarea six and are being considered because of an application that came to the Board for one of the lots within the subarea. The

zoning for the QLRP supersedes any of the new downtown zoning regulations. His recommendations included amendments to the maximum building coverage, the maximum impervious coverage, the side yard setback, the building height, the lot density and sidewalk width. The biggest factor effecting development within the entire QLRP is the presence of the Mine Brook floodway, flood plain and riparian areas. He went on to emphasize how heavily regulated and restrictive the NJDEP is with these areas, the mapping done by FEMA and the extent to which so much of subarea six is in a floodway or flood plain. The DEP does not want any obstructions within a floodway, including building within an existing building footprint. According to the FEMA mapping, the portion of the 55 Claremont lot where a new building is proposed by Equinet Properties, is neither in a floodway or flood plain. According to Mr. Szabo, it is one of the most developable lots in the entire QLRP. He felt that limiting this site's construction to the existing building footprint, compared to other lots, was somewhat punitive given that the buildable area is neither in the flood plain or floodway. He displayed and explained the table from his memo that compares the existing D-CL downtown zoning with that proposed in the amendment. Another displayed table compared the bulk restrictions for all of the subareas of the QLRP, with subarea six shown as being the most restrictive. He did not find the proposed amendments to be out of line with what already exists in the QLRP. The proposed additional roof height was intended to achieve visual and architectural interest in the downtown by allowing gable roofs and not forcing flat roofs. How development occurs in the QLRP will largely be dependent on the NJDEP as the flood mapping appears to be widespread. Unless there is considerable lot consolidation by a developer, the area is going to be difficult to redevelop. Consequently, he does not feel the proposed 50% impervious coverage for the subarea should be of concern and that developing the 55 Claremont site may become a catalyst for further development of the QLRP. He said that the amendment is only setting a coverage threshold but that the NJDEP may be more restrictive. Mr. Szabo strongly disagreed that this constitutes spot zoning because the changes are not being applied to all of subarea six and not just a single property. Additionally, tweaking individual zone requirements within an RDP is common in working with a developer, as long as there are no changes to the permitted uses. He finds that accommodating the Equinet proposal is not a detriment to the area nor the QLRP, as it is consistent with the Borough's vision for the area.

Mr. Horowitz expressed concern with changing the zoning for all of the subarea only to accommodate the Equinet site when the developer has the option of seeking variance relief for its proposal. He also felt it would set a bad precedent. Mr. Szabo and Mr. Warner explained that jurisdiction would shift to the Board of Adjustment if the applicant were to seek "d5" and/or "d6" variance relief for density and/or height. Mr. McQueen said the sentiment of the Council was to not have the application that was filed with the Planning Board have to go to a different Board just for a fractional increase in the allowable density and minor bulk amendments that it did not believe were inconsistent. To his question, Mr. Szabo responded that the proposed amendments would not affect the development of a park in the QLRP. Mr. McQueen said that whether or not the Board finds the amendments consistent with the master plan, the Council is very interested in the Board's qualitative findings and recommendations. Mr. Horowitz opined that changing all of subarea six to fix the problems on one lot is not an appropriate or good planning procedure.

Mr. Szabo's opinion as a professional planner, as solicited by Mr. Warner, was that based on his review, the QLRP amendments do not create an inconsistency with that plan's current vision nor

other planning policies of the Borough, which he qualified to include the comments of the Board. Per Mr. Warner, as this review is not a public hearing, it is discretionary whether the Board wants to allow public comments, which is not required. He pointed out that the public will have an opportunity to comment on the ordinance when the Council holds its public hearing on the matter. The Board agreed to open the meeting for public comments and heard from the following:

Jeff Collar: Asked an unrelated question about the impact of removing the pond at Nervine Park on potential flooding, to which no one had a response.

Bonnie Stone Sellers: Cited provisions in the master plan with which she felt the amended ordinance would not comport; that it would be preferable to not arbitrarily change subarea six but rather let developers seek variances; higher densities in other subareas are not relevant to this subarea; questioned the potential impacts of allowing 50% coverage on other lots; changing the QLRP to accommodate development of a single lot sets a bad precedent.

Kathy Peachey: Asked about the comparative height of a building on the other side of Mill Street; asked if the density increase would result in additional dwelling units; asked Mr. Szabo for further clarification of his statement regarding adherence to existing lot coverages in a floodway or flood plain as being punitive to other properties; thanked the Board for its careful consideration.

Aaron Duff: Expressed his appreciation for the Board's work; not comfortable relying on DEP regulations; does not find allowing greater lot coverage to be consistent with the concept of a park in subarea six; does not find appropriate amending subarea six to accommodate a single lot.

Mr. Warner said that the Council, with an effective majority and a "reasons resolution", may nevertheless adopt the ordinance regardless of the Planning Board's consistency finding. Similarly, the Council is not bound to follow the Planning Board's recommendations. Mr. Szabo added that the Council can also amend and re-introduce the ordinance and send it back to the Planning Board for another consistency review. In a straw poll, all members except for Mr. Simoff felt the ordinance was inconsistent with the master plan. After further deliberation, the Board decided to recommend that the ordinance be amended only to the extent use variances would not be required for lot density and/or building height.

Mr. McQueen moved that the ordinance was found to be inconsistent with the master plan, that the Board recommends a density increase to nineteen units per acre and an allowable roof height increase to 40', and that it be noted that amending an entire subarea of the QLRP for the purposes of a single lot sets a bad precedent. The motion was seconded by Ms. Gardner.

Roll call vote:

All in favor: Members Gardner, Horowitz, Kellogg, McQueen and Thompson.

Those opposed: Mr. Simoff. Those abstaining: none

B. Memorialize Resolution #SP-239 Team Welsh, LLC.; PRELIMINARY & FINAL SITE PLAN w/ Variances, 13 Old Quarry Road, B:100, L:2.29 Zone: I; Application heard & approved 7/28/22; Resolution previously considered 9/29/22.

Mr. Warner explained that the draft resolution now before the Board has been amended in

accordance with the Board's 9/29/22 review comments, that approval conditions 6), 7) and 10) be consolidated into one condition. The consolidated conditions now appear as condition 6). This constitutes the only change that was made to the draft resolution reviewed on 9/29.

A motion to adopt the resolution as amended was made by Mr. Simoff and seconded by Ms. Thompson.

Roll call vote:

All in favor: Members Gardner, Horowitz, Kellogg, Simoff and Thompson.

Those opposed: None. Those abstaining: none

C. Memorialize Resolution #SP-242 Mine Brook Rd. Urban Renewal Assoc., L.P.;
PRELIMINARY MULTIFAMILY (AFFORDABLE) RESIDENTIAL SITE PLAN;
Mine Brook Road, B:80, L:15.38, Zone: AH-3; Application heard & approved 8/11/22;
Resolution previously considered 9/29/22.

Mr. Mottola noted that a summary of the revisions requested by the Board at its 9/29 review of this resolution had been provided to the Board and are incorporated in the draft now before it. Ms. Gardner noted an incomplete address for one of the applicant's consultants on page 4 and added that the same error occurs in all three of the affordable housing approval resolutions. She also identified two typographical errors elsewhere in the draft.

A motion to adopt the resolution as amended and corrected was made by Mr. Simoff and seconded by Ms. Kellogg.

Roll call vote:

All in favor: Members Gardner, Horowitz, Kellogg, McQueen and Simoff.

Those opposed: None. Those abstaining: none

D. Memorialize Resolution #SP-243 – Mine Brook Rd. Urban Renewal Assoc., L.P.;
PRELIMINARY MULTIFAMILY (AFFORDABLE) RESIDENTIAL SITE PLAN;
18 Mount Airy Road, B:124, L:1, Zone: AH-6; Application heard & approved 8/25/22;
Resolution previously considered 9/29/22.

Upon review, the Board noted the need for the same consultant's address to be completed as in resolution #SP-242; corrected several additional typographical and grammatical errors throughout; asked that the term "good faith effort" be stricken wherever possible; changed "required" to "obtained" in condition 73); deleted condition 75) as not applicable to a preliminary site plan approval; asked that the words "intentionally omitted" be inserted wherever conditions have been deleted; and, added a new condition to capture a stipulation to increasing the separation between an existing transformer and the buildings for safety purposes.

A motion to adopt the resolution as amended and corrected was made by Mr. McQueen and seconded by Mr. Horowitz.

Roll call vote:

All in favor: Members Gardner, Horowitz, McQueen and Thompson.

Those opposed: None. Those abstaining: none

E. Memorialize Resolution #SP-244 – Mine Brook Rd. Urban Renewal Assoc., L.P.;
PRELIMINARY MULTIFAMILY (AFFORDABLE) RESIDENTIAL SITE PLAN;

63 Bernards Avenue, B:102, L:12, Zone: AH-7; Application heard & approved 8/11/22; Resolution previously considered 9/29/22.

Upon review, the Board noted the need for the same consultant's address to be completed as in resolution #SP-242; corrected several typographical and grammatical errors throughout; asked that the term "good faith effort" be stricken wherever possible; and, removed condition 12) as condition 28) adequately covers the requirement.

A motion to adopt the resolution as amended and corrected was made by Mr. Simoff and seconded by Mr. McQueen.

Roll call vote:

All in favor: Members Gardner, Horowitz, Kellogg, McQueen and Simoff.

Those opposed: None. Those abstaining: none

7. New Business: Review of 10/13/22 Bills List w/ Invoices.

Upon review, a motion to pay the listed invoices in the amount of **\$3,125.00** was made by Mr. Simoff and seconded by Ms. Kellogg.

Roll call vote:

All members voted in the affirmative.

8. Upcoming Board Reviews/Public Hearings/Pending Applications The Board acknowledged the following matters and their respective status:

A. Application #SP-240 – Greyfield Management, LLC – Preliminary & Final Site Plan w/ Variances; 106 Mine Brook Road, B:97, L:3, Zone: D-C; Previously heard 9/15/22; Scheduled to be continued 11/17/22.

[Eligible to vote: Members Gardner, Graham, Horowitz, Kellogg, Macmillan, McQueen, and Thompson]

B. Application #SP-241 – Essex Building, LLC Preliminary & Final Site Plan w/ Variances; Corner Essex Ave. & Claremont Rd., B:75 L: 5 & 6, B: 76 L: 4 & 5, Zone: D-C; Received 6/20/22; Previously heard 9/29/22; Scheduled to be continued 11/17/22.

[Eligible to vote: Members Gardner, Graham, Kellogg, Macmillan, McQueen and Thompson]

C. Review Planner's report re: Council referred request for zone line change at 477-1 Mine Brook Rd.; Board review and recommendation to Council scheduled for 10/27/22.

D. Public hearing for Preliminary Investigation of 25 Claremont Rd., B:71 L:3 as Area In Need of Redevelopment per Council resolution #22-154; P.I. by Borough Planner Szabo authorized 6/30/22; Scheduled to be heard 12/1/22.

E. Public hearing of 7/28/22 draft Parks and Recreation Plan for master plan inclusion; First draft reviewed 5/26/22; Revised Parks and Recreation Plan rec'd 7/28/22; Public hearing date T.B.D.

9. Business of Visitors, second opportunity: Ms. Kathy Peachey, 70 Chilton Street: Expressed her thanks and appreciation to the Board for its work.

10. Executive Session: None.

11. Adjournment: Vice Chair Horowitz adjourned the meeting at 10:20 pm.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'FM', with a large circular flourish on the left side.

Frank Mottola, Planning & Zoning Boards
Administrative Officer & Recording Secretary

Keywords: Quimby-redevelopment-Team-Welsh-affordable-Mine-Brook-18-Mount-Airy-63-Bernards