

PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – March 24, 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 Chair Robert Graham at 7:36 pm. *(Mr. Graham asked that the Zoom meeting URL be added to the pre meeting agenda distribution email.)*
2. **Roll Call:**
Present – Members Gardner, Graham, Horowitz, Kellogg, , McQueen, Simoff and Thompson
Absent – Members Macmillan and Paluck.
Board Professionals Present: Attorney John Kaplan, Planner John Szabo, Jr. and Engineer Robert Brightly.
3. **Minutes:** Review of draft 2/24/22 meeting minutes.
Upon review, Chair Graham called for a voice vote to approve the draft minutes as presented. All eligible members voted in the affirmative. Mr. Horowitz, who was not eligible, abstained.
4. **Communications:** The following correspondence was acknowledged by the Chair:
 - A. 3/4/21 [sic] Somerset County Planning Board re: Notice of 3/30/22 County Preservation Plan virtual public hearing.
 - B. 2021 Board of Adjustment Annual Report.
The Board discussed whether there was an action it needed to take based on the Board of Adjustment's recommendation regarding construction stakeouts. The Board decided to take no action pending review of the report and discussion by the Borough Council.
5. **Business of Visitors not related to agenda:** None.
6. **Old Business:** None.
7. **New Business:**
 - A. Application #SP-237 Bistro 73 – Preliminary & Final Major Non-residential Site Plan w/ Variance & Design Waivers; 73 Morristown Road, B:77, L:8, Zone: D-C; D-C; Received 12/22/21; Waiver requests, completeness determination and public hearing scheduled for 3/24/22.
Appearing on behalf of the application were attorney Frederick Zelle, co-owner Afrim Berisha, engineer James Madsen and architect Ralph Finelli. All of the witnesses and the Board's professionals were sworn by Mr. Kaplan.

Mr. Zelle introduced the application stating that it proposes the addition of a third floor to the existing building, containing two, two-bedroom apartments, and the permanent addition of an existing 40-seat outdoor dining structure that was previously erected under temporary Council relief granted in response to the pandemic. The main building's roof will change from pitched to flat and will remain code compliant. The total number of combined interior and exterior seats will not exceed 90 as per a prior Planning Board condition of approval for outdoor dining. The application asks for site plan approval with minor variance relief for an existing nonconforming front yard setback condition (1.8' exists, and will continue with the third floor addition, where 2' is required) and a parking variance to have eight on-site spaces where 52 are required. The parking requirement can be satisfied through the use of offsite parking located in the lower train station parking lot, on the street and on nearby private properties via cooperative agreements. One is with the next door business owner, John Henry, and the other is at Somerset Feed and Grain across the street. Mr. Zelle said that the eight existing onsite parking spaces behind the building adequately satisfy the apartments' parking needs.

Mr. Berisha said he owns the subject BYOB restaurant with two partners, which has been in operation for about 20 years. He described the building and its environs, stating the first floor houses a 90 seat restaurant and the second floor has both one and two bedroom apartments. The site is mostly flat with a retaining wall and steep embankment at the rear of the property. The ingress/egress driveway, which straddles the lot line, is shared with the next door business. The new outdoor seating structure, referred to as the "atrium", is a retractable covered enclosure. It, like the existing open air outdoor dining area, has 40 seats. There is a solid fenced-in area behind the building where the outdoor furniture is stored when not in use during colder months. The 90 seat maximum is maintained by virtue of the kitchen's capacity and service limitations, with the vast majority of seating booked by reservation. The restaurant is open daily except Monday's. Lunch seating begins at 11:00 am, there is a lag period between 3:00 and 5:00 pm, and the last seating occurs by 9:30 pm. The latest the restaurant is open on the weekends is midnight. The maximum number of owners and employees on site is 14. Some employees ride bicycles rather than drive to work. He estimates six or seven employee parking spaces are needed. Most patrons are regulars. They know of the availability of parking in the aforementioned offsite locations. There have been no complaints over a lack of parking. Mr. Berisha reviewed the parking counts that he took and submitted as part of the application. He confirmed the apartment count as two existing and two proposed. One of the existing residents is his mother. The other is a long time tenant. He cited the nearby Station restaurant as also having apartments above the first floor and similar onsite parking reserved for tenants.

Mr. Berisha's responses to the Board and its professionals:

(Mr. McQueen) The cooperative parking agreements with the businesses next door and across the street have never been formalized.

(Ms. Gardner) There is an entrance on the side of the building into a vestibule that has doors to both the upstairs apartments and the restaurant kitchen. A separate fire escape is not planned for the apartments.

(Ms. Thompson) He has not had complaints from patrons that park at the train station about having difficulty crossing Mine Brook Road. Single seat reservations and/or single walk-ins are infrequent.

(Ms. Kellogg) Last summer he had a noise complaint from neighbors when the entire restaurant was booked for a wedding party that had a live band. The restaurant will continue to be available for such events in the future. (Mr. Szabo commented that outdoor dining is now regulated by the recently adopted downtown zoning ordinance).

(Mr. Horowitz) There are no plans to add further outdoor seating. When the weather is amenable the majority of his patrons prefer outdoor dining. (Mr. Zellely stipulated that Bistro 73 will continue to be bound by the 90 seat maximum from the original outdoor dining approval.)

(Chair Graham) There is no ambiguity regarding the lot line between Bistro 73 and the John Henry property. The lighting for the original outdoor dining area is on posts and not attached to either of the buildings between which it is located.

(Mr. Szabo) He would accept a condition that parties and weddings would also have to adhere to the 90 person/seat limitation. He could not account for the locations where all of his patrons were parking when he did the counts he provided.

(Mr. Kaplan) The onsite parking spaces will be specifically assigned to tenants. He is open to whatever the Borough would like to see as far as signage and striping. (Mr. Zellely indicated that they would not have a problem stipulating that the eight onsite parking spaces would be restricted for use solely by the apartments' tenants.)

Mr. Berisha's responses to members of the public:

(Daniel Lincoln, RA, HPAC reviewing member) He did not know the percentage of patrons not from Bernardsville or Bernards Township but said the vast majority of them are local and of those, the vast majority are repeat customers.

Mr. Madsen provided his professional credentials and was accepted by the Board. He described the site from an engineering perspective and restated the deficient front yard setback given by Mr. Zellely. There is currently 78.58% lot coverage. The parking requirement for the two existing and two new apartments is eight spaces. A total of 52 spaces are required for the combined restaurant and residential uses, and specifically 90 seats and 14 employees. An accessible onsite parking space is required for which the current parking layout will need to be reconfigured. There was discussion with the Board as to whether the accessible space would be for the restaurant or apartments. Up to 15 parking spaces could be provided if it weren't for the retaining wall and steeply sloped portion of the lot. The existing planters next to the atrium dining structure are not shown on the site plan. The site is served by public sewer and water.

Reviewing the Board's professionals' reports, Mr. Madsen indicated that there is nothing in Mr. Brightly's 3/17/22 report with which they disagree or cannot comply. In Mr. Szabo's 3/1/22 report Mr. Madsen clarified that only the driveway curb opening is 34' wide. The actual shared driveway width is 24'. The sidewalk across the front of the property has a fairly consistent width of 8.45', from building face to face of curb, where 8' is required. Mr. Graham noted that dimension is diminished where there is a ramp and basement access hatch.

Mr. Madsen's responses to the Board and its professionals:

(Mr. Simoff) The balcony overhangs are not shown on the site plan.

(Mr. Brightly) The dimension between the easternmost parking space and the corner of the outdoor dining structure is about 10'. He was unaware of the purpose of the mountable curb

running parallel with the westernmost parking space. (Mr. Berisha responded that it was installed to direct stormwater toward the street but could be removed or relocated if necessary.) Mr. Madsen believed that the northerly row of parking spaces could be resized and adjusted to allow for an additional space to be added diagonally in the northeast corner of the lot between the existing parking and the atrium. The depth at the available area is about 30'.

(Mr. Horowitz) As suggested by Zelle, it may be possible to relocate the dumpster to the offset in the western property line that parallels the John Henry building.

(Mr. Kaplan) He believes the requested variance qualifies as a "c1" variance.

The Board agreed that an amended site plan should be drawn and submitted for review. It should include the discussed revised parking layout, a designated accessible parking space, the relocated dumpster, the locations of the planter boxes and the marked accessible route into the restaurant.

There were no questions from the public for Mr. Madsen.

Mr. Finelli provided his professional credentials and was accepted by the Board. Sharing his screen he described the floor plans and building elevations that were previously submitted as part of the application. The existing ramp into the restaurant, which has only a 5" rise, would be retained. He noted that the balconies would be functional to the extent they could be used as means of emergency egress and to add to the building's aesthetics. A second means of building egress is not required by code and exterior, pull down fire escapes are not allowed. At minimum the residential floors of the building will be sprinklered and there must be a 2-hour fire separation between the first and upper floors. HVAC equipment will be located on the roof, which has a parapet to conceal it being viewed. The roof will be accessible from the third floor landing via a ship's ladder and roof hatch. The new roof surface will be about 2.5' higher than the existing roof ridge and the top of the parapet will be between 5.5' and 6' higher than the existing ridge line. The street facing façade of the two residential floors has 20% transparency, where 15% to 50% is required. The ground floor has 32% transparency where 70% to 80% is required.

Mr. Finelli's responses to the Board and its professionals:

(Ms. Gardner) The building uses natural gas for heating. They looked at changing materials between the ground and upper floors but ultimately felt that the building's aesthetics as presented are compatible with other architecture in the downtown. He agreed that the building would become less stark looking with the application of decorative window and door trim. Exterior lighting would come from within the awnings. No surface mounted fixtures like the goosenecks on the existing building are proposed.

(Mr. Szabo) The balconies extend 3' beyond the building face and consequently encroach into the public right-of-way (ROW). In that the owners did not want to encourage use of the balconies for sitting or standing, they would have no problem pulling the balconies back toward the building to remain as means of egress and only decorative in function. They also would be reduced in depth to not encroach into the ROW.

(Chair Graham) Once the mechanical system has been designed they will see if solar panels on the roof are a viable option.

Mr. Finelli's responses to members of the public:

(Johanna Wissinger, Environmental Commission member) His experience with designing green roofs is on residential applications. In this case no increase in impervious coverage is proposed so there will be no additional runoff that needs managed. He feels a green roof would be a burden on the building's structure and to maintain. Additionally, there will be no stair access to the roof. Roof gardens and green roofs are more appropriate when combined with other roof amenities that are available to the building's occupants.

In discussing the building's aesthetics, Mr. McQueen quoted the language of the newly adopted downtown design guidelines that state building additions and new construction should take cues from downtown Bernardsville's most iconic, historic buildings. He opined that the proposed design does not do that. Mr. Szabo said the Board must decide whether the balcony features alone satisfy the requirement for building articulation. The proposed signage plan for the site and building should be presented as that plays a part in the overall aesthetics. At some point a summation and the criteria for the relief being sought needs to be put on the record. Mr. Horowitz commented that the guideline that buildings avoid flatness has not been adhered to. Ms. Gardner felt that the all-white exterior appears stark and clinical and that a softer tone such as that of the existing building would be more visually appealing. She also thought the restaurant's name could be made more visible. Chair Graham opined that the existing aesthetics should be used as a starting point and then improved upon. Per Mr. Brightly's inquiry, Mr. Zelley said the applicant would request that the hours of outdoor dining operation required by the prior approval and any other conditions less liberal than what the current ordinance allows be rescinded in favor of the new zoning regulations for consistency sake. Mr. Kaplan opined that the applicant's notice was satisfactory for the Board to approve that. The applicant agreed to revisiting the building design and returning with a more acceptable solution.

Regarding shared parking, Mr. McQueen requested that Mr. Szabo check compliance with adopted ordinance #2021-1885 which allows outdoor dining to occur over required onsite parking spaces whenever shared offsite parking arrangements can be procured. Mr. Szabo said he encourages shared parking whenever possible for various beneficial reasons. Bistro 73 already has a successful history of accommodating its patrons via shared parking agreements. At some point though, he recommends that the Borough take stock of all the shared parking agreements in effect by performing a capacity analysis so that the same shared parking spaces do not become over committed. He also noted that the state requirement for EV is not imposed on lots the size of Bistro 73's. Chair Graham noted that with the departure of the movie theatre the demand for public parking spaces has been reduced. Bistro 73 should have a "plan B" in the event existing shared private parking agreements disappear due to changes of ownership.

Upon discussion with the applicant, it was agreed that the hearing would be continued at the April 14th meeting, before which they will submit a revised site plan, a revised building design and a signage plan for review. The applicant will endeavor to submit their supplemental documents by March 31st. They will directly submit copies to each of the Board's professionals and the HPAC to expedite transmittal time. Mr. Kaplan announced that the hearing will be continued on 4/14/22 without further notice to the public.

B. Review of 3/24/22 Bills List w/ Invoices

Upon review, a motion to pay the listed invoices in the amount of **\$1,787.50** was made by Mr. Simoff and seconded by Ms. Thompson.

Roll call vote:

All members voted in the affirmative.

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

A. Application #SP-236 Community In Crisis – Minor Non-residential Site Plan; 9 Church Street, B:67, L:4, Zone: D-C; Received 12/28/21; Waiver requests, completeness determination and public hearing requested for 4/14/22.

The Board agreed to scheduling this application to be heard at the 4/14 meeting as requested, to be heard after the conclusion of the Bistro 73 application.

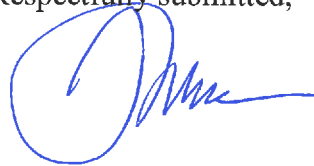
B. Application #SP-238 Equinet Properties, LLC - Preliminary & Final Residential Site Plan w/ Variance; 55 Claremont Road, B:71, L:6, Zone: D-CL; Received 2/8/22; Pending completeness review.

9. Business of Visitors, second opportunity: None.

10. Executive Session: None.

11. Adjournment: Chair Graham adjourned the meeting at 10:58 pm.

Respectfully submitted,



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

Keywords: county-preservation-annual-report-Bistro-73-Zelley-Berisha-Masden-Finelli-Mine-Brook