

PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – April 14, 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 7:35 pm.

2. **Roll Call:**
Present – Members Gardner, Graham, Horowitz, Simoff and Thompson
Absent – Members Kellogg, Macmillan, McQueen, and Paluck.
Board Professionals Present: Attorney Amanda Wolfe, Planner John Szabo, Jr. and Engineer Robert Brightly.

3. **Minutes:** Review 3/24/22 draft meeting minutes.
Upon review, Ms. Gardner identified a needed correction. Chair Graham called for a voice vote to approve the draft minutes as corrected.
All eligible members voted in the affirmative.

4. **Communications:** The following correspondence was acknowledged by the Chair:
 - A. 4/4/22 A. Suriano Financial Statements notice.
 - B. 4/6/22 John Macdowall email re: Updated Board members stormwater review training for Tier A municipalities. (discussed under 7B).
 - C. The New Jersey Planner – January/February 2022, VOL. 83, No.1.

5. **Business of Visitors unrelated to the agenda:** None.

6. **Old Business:** Continued 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; Previously heard 3/24/22; *Scheduled to be continued 4/14/22.*
Appearing on behalf of the application were attorney Frederick Zelle, owner Afrim Berisha, engineer James Madsen and architect Ralph Finelli.
Mr. Zelle recapped the application from the prior meeting stating its purposes as seeking approval to make permanent the existing temporary covered outdoor dining area with 40 seats and site plan approval for a third story building addition containing two residential apartments. Based on the Board's comments, a revised site plan and building design had been submitted.
Mr. Madsen shared his screen to display and explain the revised site plan, which he confirmed had been submitted 10 days in advance of this hearing. Rear parking spaces were restriped at 9' intervals; a new 9' x 24' diagonal parking space was added at the north end of the Atrium dining area; a relocated accessible parking space, its adjacent, striped access isle and required signage have been indicated; the planters along the west side of the Atrium were added; the dumpster

location has been moved to the building/lot line offset along the west property boundary. The cumulative revisions result in the addition of one parking space for a total of nine. Additionally indicated on the drawing were the accessible path from the HC parking space into the east side of the building; removal of the wheelchair ramp in front of the building, and the building cornice and marquee projections.

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

Regarding the relocated dumpster, the Board was of the opinion that a concrete pad should be provided beneath it, screening is required on the side facing the street and building protection should be provided. As the dumpster would be enclosed on two sides by building walls, screening could be in the form of a masonry wall on the south side and a slatted gate on the east side. Mr. Zellely stipulated to providing the above dumpster screening, with the type of building protection to be agreed upon and approved by the Board engineer.

(Mr. Graham) A garbage truck has enough room to maneuver a K-turn in the rear lot.

(Ms. Gardner) The former, gated dumpster location will be used for outdoor storage. There is striping on the driveway, exterior lighting and an awning over the residents' entry door to alert drivers that a pedestrian traffic point exists on that side of the building.

(Mr. Horowitz) The mountable curb in the rear lot is to be removed. Mr. Zellely stipulated to providing signage that marks the spaces in the rear lot as reserved for tenants. It could not be confirmed that the Atrium structure complies with the 10' minimum setback from the principal structure however, Mr. Zellely said they would be agreeable to an approval condition that restricts the distance between the two from becoming any less than currently exists.

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

(Craig Calwhite, 24 Essex Ave.) No sound control measures are being proposed at this time.

Per the Chair's request, Ms. Wolfe cited conditions of the 12/17/15 outdoor dining approval resolution (#SP-227) prohibiting the installation of speakers and outdoor entertainment or music.

Mr. Finelli shared his screen to display and explain the revised elements of the building's design. Horizontal and vertical breaks have been added to building's façades and parapets. The windows have been recessed about 6" into the masonry walls within which they are mounted. Trim details have been added around wall openings for windows and doors for a more three dimensional appearance. A fixed horizontal marquee across the front of the building articulates the change in uses between the first and upper two floors. The percentage of transparency has been increased on the first floor to about 37%. "BISTRO 73" will be displayed on the front and west building sides, which have the most visibility. The balconies are mostly decorative in nature and project only slightly beyond the face of the building. The built out center section of the building will project 20" from the existing face of building, leaving a 2" setback from the front property line. The marquee-mounted letters that spell BISTRO 73 will only be up lit from the top edge of the marquee. There will also be down lighting from the underside of the marquee. (Mr. Szabo reviewed the sign regulations and found what is proposed to be compliant at 16 S.F. and less than a foot from the face of the building. He categorized it as a canopy sign rather than a marquee and said that he finds it to be within the scope, spirit and intent of the ordinance. Mr. Horowitz found

the design to be somewhat industrial looking and said the new design guidelines should be rigorously applied. It was discussed whether a marquee is a permitted attachment under the new downtown design regulations. Mr. Berisha added that the marquee serves a practical purpose by providing shade for the interior seating near the front windows where the sunlight is sometimes too bright. Mr. Simoff opined that maybe the main building color could be that of the tan trim on the adjacent building. Mr. Finelli referenced other buildings on Mine Brook Rd. that are similarly warm gray toned. He said the other BISTRO 73 sign on the west building façade measures 20 SF, and together with the front sign, the total area will be under the 50 SF limit. Ms. Gardner felt that the marquee provides a strong and attractive horizontal element to the building's appearance.

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

As requested, Mr. Zellely was granted a break to confer with his client. After which he asked that Mr. Berisha again be heard so as to describe his past and current practices regarding the use of outdoor speakers and the playing of music. He asked that if these are found to be in violation of the prior conditions of approval, they would request modification of those to allow the current practices to continue or at least be allowed to the extent allowed by current outdoor dining regulations. (Mr. Szabo read the current regulations, which limit outside sound levels to 65 dB during the daytime and 50 dB between the hours of 10 pm and 7 am. He said these mirror the state noise ordinance. Ms. Wolfe confirmed that condition #4 of the prior outdoor dining approval prohibited the installation of speakers and the playing of any outdoor entertainment or music.)

Mr. Berisha stated that he does play background music for ambience. He has two speakers located at the outdoor dining patio and two in the Atrium. He said the music is not blasted and its volume allows patrons to have conversations. He has not had any complaints from patrons that the music is too loud. Nor has he had any complaints from neighbors, the police or the zoning officer. The music is from a Sonos playlist. The music also plays inside the restaurant and is the same at all three locations. (Mr. Zellely asked that if the restaurant is in violation of the prior approval that it be rescinded in favor of the current outdoor dining regulations and Borough noise ordinance. Mr. Szabo said that decibel levels are typically measured at property lines, with measurements taken by trained personnel from the county health department. He did not know if there was an associated cost.) Mr. Berisha said that he did have a neighbor complain once last summer when a wedding reception was held outdoors at the restaurant and that the celebrants had hired a six piece band. He said he asked the band to lower the sound after the complaint and that it complied. He himself never hires live music or DJ's for the restaurant.

Chair Graham commented that there have been complaints about noise from garbage pickups at the restaurant. But he believes noise control at the restaurant will come down to measurement and enforcement of the noise ordinance. Mr. Simoff added that any cost should be borne by the applicant.

Neighbor Craig Calwhite, 24 Essex Ave. was sworn and permitted to comment on Mr. Berisha's testimony, with which he disagreed. Referencing the 2015 outdoor dining approval resolution, he pointed out various ongoing violations. He read a 12/12/21 complaint report from the police department regarding two excessive noise complaints they responded to the same night due to sound from DJ-played music and subsequently from music over the restaurant's speakers. Now

he and his wife hear noise whenever the restaurant is open due to the Atrium dining area's music over speakers. Sound barriers were not installed as stipulated by Mr. Berisha.

Neighbor Joan Calwhite, 24 Essex Ave. was sworn and also given the opportunity to comment on Mr. Berisha's testimony. She also complained about the noise that reaches her home from the restaurant's outdoor dining, stating that she cannot open her windows because of it. She can make out the lyrics of songs and hears patrons' conversations. She requests that sound measurements be taken. The prior resolution was partly created based on their concerns about noise. She also expressed concern that Mr. Berisha's testimony in 2015 that the outdoor area would be utilized only from mid-April to October has not been followed. (Mr. Szabo noted that the current ordinance does not limit the times of year outdoor dining can be utilized. He also explained the process by which complaints can be made and enforced by the Borough. Ms. Wolfe read the prior resolution condition that prohibited use of the outdoor dining space after 10 pm and before 6 am.) Ms. Calwhite asked that the Board take into great consideration the sound that comes from music and talking at the restaurant, which is now at an unacceptable level.

There were no other questions for Mr. Berisha nor comments on the application from members of the public.

Mr. Zelle said that any outdoor dining conditions of the prior approval should be superseded by the current ordinance. He believes it is a matter of law whether prior variances that were granted and tied to restrictive conditions could remain if the attached conditions were to be lifted. Mr. Simoff did not believe they could. Chair Graham opined that the conditions probably need to be adjusted to reflect the latest ordinance, but also felt the restaurant will be unable to comply with the noise ordinance limits. He would be content with the noise ordinance having jurisdiction and suggested the Mr. Berisha buy a sound meter. Mr. Szabo read the ordinance provision limiting the use of outdoor dining areas to the hours of 6 am to 10 pm from Sunday through Wednesday and between 6 am and 11:59 pm from Thursdays through Saturdays. Limitations to sound, including music and talking, that emanate from businesses are limited under the *Nuisances* provisions of the downtown ordinance found in section 12-12.11.

Mr. Zelle asked that the Board consider letting the current downtown ordinance regulations supersede the prior resolution in its entirety or to the extent it may be less restrictive than the prior resolution. Such uniformity would benefit both enforcement personnel and the applicant. Ms. Wolfe listed the operational restrictions placed on the restaurant from the 2015 approval:

- A maximum of 90 diners indoor and outdoor combined.
- Storage of outdoor dining furniture indoors in the winter. (Mr. Berisha said the furniture is stored exterior to the building within the fenced in area behind the building.)
- No utilization of the outdoor dining area between 10 pm and 6 am. (The current ordinance allows later hours on Thursday through Saturday.)
- Outside lighting, other than security lighting, extinguished by 10:30 pm.
- The provision of containers for trash and recyclables.
- Licensing of the restaurant by the Board of Health

The Board discussed but did not find appropriate Mr. Simoff's suggestion that the applicant provide regular reports to the zoning officer certifying their compliance with seating and noise

limits. Noise complaints should be made to the zoning officer who will coordinate testing and with the county health department and enact enforcement as appropriate.

Mr. Zelle summarized the application restating its requests to make permanent the outdoor dining temporarily allowed by the Council and that site plan approval be granted for a third floor building addition. A new front yard setback variance is required for the building as its new façade will be closer to the front property line than the existing. A variance is additionally required for insufficient onsite parking. He provided positive and negative criteria justifications for granting the variances and asked the Board approve the application. Mr. Szabo certified that the application complies with the downtown architectural standards and does not require variance relief for other than the degree of transparency on the first floor, which is an existing condition that is being improved by this proposal. Ms. Wolfe summarized the conditions that would apply if the Board approves the application: a 90 patron maximum; assigned and signed parking spaces in the rear lot; conformance with the comments in the Board's professionals' reports; screening of the rooftop equipment; relocation and screening of the dumpster; compliance with the Borough's current outdoor dining regulations; embellished striping by the residents' entrance door; compliance with signage requirements; no decrease in the distance between the Atrium and the principal structure, and no enlargement of the Atrium beyond its current size.

Ms. Thompson lauded the architectural changes that were made based on the Board's comments. Mr. Horowitz commented that going forward attention should be paid to the cumulative effects of all the informal cooperative parking agreements that have been made and approved. Chair Graham was supportive of the application but believes the applicant will likely need to make adjustments to comply with the noise ordinance. Mr. Szabo does not believe it's possible to enforce loud talking in outdoor dining areas. Ms. Gardner felt that the discussions over the course of the two hearings has given the applicant a more acute understanding of the concerns regarding his business operations.

A motion to approve the application with all the stated conditions and stipulations was made by Ms. Thompson and seconded by Ms. Gardner.

Roll call vote:

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

Those opposed: None. Those abstaining: None.

7. New Business:

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 scheduled for 4/14/22.

Although the applicant was in attendance, due to the lateness of the hour, it was agreed that this application will be commenced at the April 28th meeting. Same was announced and that no further notice to the public would be forthcoming.

B. Updated Board members stormwater review training for Tier A municipalities.

Mr. Mottola provided an explanation stating that this training is required by the NJ DEP of all

Council and land use Board members. The same training that was required in 2018 has since expired and all must be retrained. He said that DPW director John Macdowall did not find there to be any exceptions for licensed engineers. He directed the Board to the link on the state webpage titled, "*Asking The Right Questions in Stormwater Review Training Tool*" as the one that opens the training session. As requested, the following links are provided to the state webpage: <http://www.nj.gov/dep/stormwater/training.htm> and to the training course: https://www.nj.gov/dep/stormwater/asking_the_right_questions.html.

C. Review of 4/14/22 Bills List w/ Invoices.

Upon review, a motion to pay the listed invoices in the amount of **\$2,485.00** was made by Ms. Gardner and seconded by Mr. Horowitz.

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. Public Hearing re Preliminary Investigation of Area In Need of Redevelopment; 35 & 39 Olcott Square and 5 Morristown Road, Block 125, Lots 1, 2 and 3; Study presentation by Topology; Scheduled to be heard 5/12/22.

B. Planning Board review of July 2021 Parks, Recreation & Open Space Master Plan for adoption into Borough master plan; Review procedure, public hearing & scheduling TBD.

C. 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; Deemed substantially complete 4/12/22 pending Board action on requested waivers; Hearing date T.B.D.

D. Application #SP-239 Team Welsh, LLC - Preliminary & Final Site Plan w/ Variances; 13 Old Quarry Road, B:100, L:2.29, Zone: I; Received 4/7/22; Pending completeness review.

9. Business of Visitors, second opportunity: None.

10. Executive Session: None.

11. Adjournment: Chair Graham adjourned the meeting at 10:39 pm.

Respectfully submitted,



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

Keywords: stormwater-training-Bistro-73-Zelley-Berisha-Masden-Finelli-Community-Crisis