

PLANNING BOARD
BOROUGH OF BERNARDSVILLE
Minutes – July 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 7:30pm.

Due to expected attendance, the meeting was hosted by the Borough's Redevelopment Attorney, Joseph DeMarco, Esq., utilizing his Zoom webinar software with the capacity for 500 attendees.

- 2. Roll Call:**

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

Absent – Members Macmillan and Paluck.

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

Also in attendance: Borough Redevelopment Attorney, Joseph DeMarco.

- 3. Minutes:**

A. Review of 6/16/22 draft Meeting Minutes.

Upon review the need for a text correction was noted by Ms. Gardner. A motion to approve the minutes as corrected was made by Ms. Thompson and seconded by Ms. Kellogg.

Voice vote:

All eligible members voted in the affirmative. Mr. Horowitz abstained.

B. Review of 6/30/22 draft Meeting Minutes.

Upon review a motion to approve the minutes as presented was made by Ms. Thompson and seconded by Ms. Kellogg.

Voice vote:

All eligible members voted in the affirmative.

- 4. Communications:** The following correspondence was acknowledged by the Chair:

7/1/22 P. Hoagland email re: Transmittal of 5/26/22 Open Space-Recreation Plan presentation to Planning Board.

- 5. Business of Visitors unrelated to the agenda:** Graham Brady, 17 Old Army Rd., asked that the agenda be read and Chair Graham obliged.

- 6. Old Business:** Resolution of Dismissal w/ Prejudice #SP-238 Equinet Properties, LLC - Preliminary & Final Residential Site Plan w/ Variance; 55 Claremont Road, B:71, L:6, Zone: D-CL;
re: no PB jurisdiction determination on 6/16/22.

Mr. Warner explained that since the matter may ultimately come back to the Planning Board and the applicant has granted the Board an extension through the end of the year, it would be prudent to not dismiss the matter at this time but to carry it to a future date. New notice to the public would still be

required but the applicant would not have to file an entirely new application as it would if dismissed with prejudice. On a call by the Chair for a voice vote by the Board, all members indicated their agreement with Mr. Warner's recommendation. Accordingly it was announced that the application would be carried to the Board's scheduled meeting on September 15th, if the Borough has acted by then, with new notice to the public required.

7. New Business:

Virtual Online Public Hearing via Zoom Webinar of 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.

Chair Graham opened the public hearing by explaining to all attendees the nature of the hearing; what may and may not be considered, the rules by which the public and the Board are bound, and the duties required of the Board under the Borough Council's charge. The public will be afforded the opportunity to ask questions of the presenter. He asked that the public be concise and not be repetitive with comments once the hearing is opened for comments. A time limit of five minutes per person will be imposed.

Following Mr. Graham's statement, Mr. Warner provided background for the Board's charge from the Council by adopted resolution to conduct an investigation of the subject properties as relates to potential redevelopment, in accordance with the state's redevelopment law. He found the notice that was provided to be in accordance with the law. The study prepared by Topology has been made available to the public since it was published in April. Accordingly, the Board has jurisdiction to hear the matter this evening. The public will be able to ask questions of the presenter and later comment on the study by means of sworn testimony, whereby members of the public wishing to comment must identify themselves, give their address and be sworn. The sole issue about which questions may be asked and comments may be made is whether any or all of the identified properties qualify as being in need of redevelopment under the statutory criteria established by the Local Redevelopment and Housing Law. Mr. Warner stressed that this is a non-condemnation redevelopment study.

Mr. Christopher Colley, P.P. a professional planner and principal with the Topology planning firm was sworn and qualified. Mr. Colley shared his screen and presented a summary of the findings from the 4/21/22 Preliminary Investigation (PI) report prepared by his firm on whether all or part of the identified properties qualify as an area in need of redevelopment (AINR). The entire on-screen presentation was marked as Exhibit **A1**. He noted that his firm also prepared the PI studies for the Quimby Lane and 65 Morristown Road redevelopment areas.

His presentation was comprised of five subject areas: 1) Introduction, 2) Study Area Overview, 3) Statutory Criteria + Area Analysis, 4) Property Evaluation and 5) Conclusions + Next Steps, with #3 and #4 being the most important. The purpose of the study was to determine whether the properties qualify as an AINR. He outlined the process with its start at the Borough Council and ultimate return to the Council by means of a findings resolution adopted by the Planning Board. He listed the steps his firm took to perform the study and arrive at its recommendations. An overview of the subject properties was provided by aerial photographs and maps. He noted that lots 1 and 2 were merged in the early 90's so in actuality the study area consists of only two lots. The study therefore references the merged lots as lot 1 and the remaining lot as lot 3. A brief history, together with the

current uses of the properties was provided. The qualifying statutory criteria, **a.** through **g.**, for finding an AINR were listed. Of those, Mr. Colley pointed to criterion **d.** as qualifying the lots as an AINR (*Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.*) and criterion **h.** (*Designation of the delineated area is consistent with smart growth planning principals adopted pursuant to law or regulation.*). He provided examples from several court cases that upheld the use of criteria **d.** and "faulty arrangement" in designating areas in need of redevelopment. A copy of the 1991 approved site plan was contrasted with aerial photos of the site layout as it currently exists to help illustrate conditions of faulty arrangement.

Analysis of Lot 1 buildings and improvements: Evidence of Faulty Arrangement (parking lot missing directional arrows, missing curbing, unapproved parking spaces, missing striping, accessibility issues; blind spots caused by on-site features); Obsolescence (lack of buildings' accessibility) and Dilapidation (damaged pavement and walkways) were illustrated and cited as creating conflict between vehicles and pedestrians and being detrimental to health, safety and welfare.

Analysis of Lot 3 buildings and improvements: Evidence of Faulty Arrangement (parking lot missing directional arrows and striping; parking in areas not on the approved site plan; building accessibility issues; vehicular access only via adjacent lot); Obsolescence (building's lack of accessibility) and Dilapidation (conditions in building basement and parking lot) were cited.

Responding to Mr. Warner, Mr. Colley affirmed that all of the above conditions within criterion **d.** do not have to be present collectively and that any one of them singularly within **d.** can qualify a property as an AINR.

Both lots were also qualified as an AINR under criterion **h.** A list of Smart Growth principles crafted by the Smart Growth Network and cited by the US Environmental Protection Agency were provided and stated as being characteristic of the study area. It was noted however that criterion **h.** by itself would not qualify the properties as an AINR. The next step is for the Planning Board's recommendation to be forwarded to the Borough Council, which can accept, reject or modify it.

Mr. Colley's Responses to the Board and its Professionals:

(Ms. Gardner) Mr. Warner interjected that her question about a municipality's responsibility in seeing to the upkeep of private properties such as these is probably beyond the scope of his authority and expertise and that responsibility for maintenance and upkeep of a study area would not have played a part in Mr. Colley's analysis of it. Whether or not the Borough has any responsibility in seeing that properties do not become dilapidated would be best answered by the Borough Attorney.

(Mr. Simoff) If the site were currently in the conditions in which it was approved, some of the issues he identified would not exist. Looking at the deeds it is his belief that the current owner was the applicant for the 1991 site plan and would be responsible for conforming with the approved site plan. Mr. Warner interjected that he is not certain that would have any bearing on Mr. Colley's

findings. Mr. DeMarco commented that it is the planner's responsibility to analyze the condition of the properties and not to assess who is ultimately responsible for their upkeep. It is not uncommon for an owner's negligence in maintaining their property to manifest conditions that qualify it as an AINR.

(Mr. McQueen) The purpose of displaying the photo of the traffic signal pole in the middle of the sidewalk at the corner of Mt. Airy Road was to show that there is insufficient width to allow accessibility for someone in a wheelchair.

(Ms. Kellogg) From materials Mr. Colley received from the Borough, he was not able to discern whether there were any engineering changes that may have caused certain parking spaces and curbing shown on the approved site plan to not have been built. Examining case law and performing interpretive analysis of existing site conditions are done in making a distinction between conditions requiring only simply maintenance and the existence of larger scale problems that are detrimental to health, safety and welfare.

(Ms. Thompson) Five years of records were requested from the police department. (One vehicular accident was found). Requests for zoning inspections of the site and infractions found were also requested. He did not find any historical uses of the site that would have supported the need for an environmental impact statement.

(Mr. Horowitz) He was not aware of the performance of any state, county or local traffic agency studies or findings that concluded that access to public roads from the site is dangerous. He did not evaluate whether the approved 1991 site plan in itself contains elements of a faulty arrangement. How the faulty arrangement came to be was not a consideration of his analysis. Criterion **h.** may apply to other areas in the Borough but his focus was only the study area as directed by the Council. He has never submitted a report that relies solely on criterion **h.**

Mr. Colley's Responses to Members of the Public:

(Eddie Zervigon, 100 Bliss Rd., Mendham) Comparable properties are not taken into consideration in performing his analysis.

(Craig Levin, 1234 Cornell Rd., Bridgewater) He has no information on accidents attributable to striping, arrows and curbing on lot 1 over the past 20 to 30 years. His risk assessment is based on whether he believes the property conditions are detrimental to health, safety and welfare. A devastating accident does not need to have occurred for there to be risk. He does not evaluate properties based on future intent or rectify faulty conditions. He is not aware of any lawsuits that may have been filed against the property owners, nor whether the zoning office has inspected the site over the past 20 years regarding its adherence to the approved site plan.

(Graham Brady, 17 Old Army Rd.) He is not aware of any environmental impact statements that were done for the property but had he found any, he would have reviewed them for relevance to his findings. The NJDEP website and Google were additionally searched for any available reports on the property. Historical aerial photos were looked at but none contained information that was deemed relevant to the study. The standards for evaluating the study area are those of the Local

Redevelopment and Housing Law, coupled with case law and his professional opinion. He does work collaboratively with other members of his firm.

(Jen Zervigon, 100 Bliss Rd., Mendham) He could not provide an estimate as to the cost of the site repairs and this is not normally considered by Boards relative to AINR determinations.

(Alex Chernin, 11 Cherry Ln., Brookside) His research did not reveal that there is an underground storage tank or that a gas station formerly existed at the site.

(Jan Greco, 41 Maple Village Ct.) He would not opine whether he would have arrived at a different study conclusion if the zoning office had enforced the approved site plan over the past 30 years.

(Frank Di Napoli, 46 Maple Village Ct.) Certain AINR studies he has performed have resulted in findings that the study areas did not qualify as AINRs. And although he could not provide a number, study areas that did not qualify were less than those that did. His fee to perform these studies is the same regardless of the resultant findings.

(Jeffrey Lefkowitz, 100 Ambar Pl.) His contract is with the Borough of Bernardsville.

(Jennifer Gunn, 7 Somerset Ave.) A dilapidation finding commonly relates to the extent to which it exists and the time it has taken to reach that state. If all of the site conditions that existed when he did his report were not present it likely would have changed his conclusion. Whether the designation of the site would change if the property owners corrected all of the stated deficiencies, he felt was a legal question he was not qualified to answer. Traffic accident reports over a longer period of time could potentially be obtained but he could not state whether that would have any bearing on his findings. He does not have a quantitative scale against which the risks on this property can be measured.

(Maria Nadel, 1 Windsor Ln., Bedminster) He has never performed a study in Peapack, although his firm may have.

(Johanna Wissinger, Washington Corner Rd.) He reaffirmed that his determinations were made irrespective of maintenance/repairs that have not been done or may yet be performed in the future.

(Marta Villa, 44 Willow Ave. Peapack) He could not cite the exact date the contract for this study was awarded, other than early this year. Lack of accessibility contributed to the obsolescence of the buildings more than their ability to be leased. Examples of building dilapidation were shown in his slides. The state's rehabilitation law is not comparative to the NJ Rehabilitation Construction Code. If the property were to be designated as an AINR, he could not say whether a traffic study would be performed.

As there were no further questions of Mr. Colley and no additional witnesses, Mr. Warner stated that the time for public comments had arrived. All those that wish to speak would be sworn, as their statements constitute testimony. Names and address must be provided and comments will be limited to five minutes. The Chair asked that comments be brief and not be redundant.

Comments by Members of the Public:

(Sari Mazen, 37 Olcott Sq.) Although they, as a business owner, have been paying "their fees" for over 30 years, the owner seemed to stop maintaining the property once he started negotiating with a redeveloper. Consequently the site is considered blighted. It just needs to be maintained. A hand rail that was removed from one of the buildings needs to be reinstalled as there is a safety issue. As a former mayor, the owner should know he needs to maintain his property.

(Eddie Zervigon, 100 Bliss Rd., Mendham) Tax subsidies that will be afforded the redeveloper and borne by Borough residents should have been borne by the property owner for the upkeep of his property. The cost of upgrading the property will be transferred from the property owner to the tax payers.

(Blake Chernin, 11 Cherry Ln., Brookside) Based on meeting attendance in opposition to redevelopment, it would appear that purpose #2 of the Local Redevelopment Law, promoting the advancement of community interests, would not occur by continuing to pursue redevelopment of the study area. If it is not the community's interests being pursued by redeveloping the lots, whose is it?

(Frank Di Napoli, 46 Maple Village Ct.) Despite being told he would not be dispossessed of his property (in the Quimby Lane redevelopment area), condemnation language has surfaced in documents signed by the governing body. The majority of municipalities that hire Topology, end up getting a redevelopment designation.

(Alicia Domínguez, 1523 Pine St.) Doesn't understand how needing to repave the parking lot results in the need for redevelopment. The buildings have continued to have tenants.

(Maria Nadel, 1 Windsor Ln., Bedminster) Made a comparison to a property in Peapack that was not designated an AINR (by Board planner John Szabo who is also Peapack's planner) but in her opinion is in much worse condition.

(Sheryl Riley, 67A Childs Rd.) Redeveloping the property is not the will of the people. She wants the town to retain its small town character.

(Jennifer Gunn, 7 Somerset Ave.) A more extensive history of accidents at the site should have been obtained and considered by the Board. She would rather see the site maintained than redeveloped.

(Abby Chernin, 11 Cherry Ln., Brookside) Redevelopment will add traffic congestion; town should insist the landlord make repairs to the site; wants to retain Bernardsville's character.

(Craig Levin, 1234 Cornell Rd., Bridgewater) *Comments were disallowed as irrelevant to what is being considered.*

(Jen Zervigon, 100 Bliss Rd., Mendham) Only small, minor changes are needed to put the site in good order; redevelopment is not needed.

(Gerald Negri, 36 Ambar Pl.) Wants Board to consider the impact on the community by displacing businesses when all that's needed are repairs to the property. The site is one of the easiest in town to get in and out of, with plenty of parking.

(Lauren Cannan, 165 Seney Dr.) The Bagel Bin is one of the pillars of the town and it would be a shame for it to be torn down just because of some missing directional arrows. She's never experienced the inability to find a parking space. Redevelopment would cause more traffic congestion and larger buildings would not be in keeping with the town's character.

At the Chair's request, a motion to extend the meeting until 11:20 pm was made by Mr. Horowitz and seconded by Ms. Thompson.

Voice vote:

All members voted in the affirmative.

(Sue Rankin, 1521 Pine St.) She concurred with other comments about wanting the Borough to retain its small town character even though a facelift is in order. She believes the site is just a case of deferred maintenance.

Seeing no further requests to comment, Chair Graham closed the public comment portion of the meeting. Mr. Warner said it was time for the Board to deliberate in its sole consideration of whether the site constitutes an AINR based on the testimony and evidence presented.

Comments by Members of the Board:

(Mr. McQueen) As a Council member he would never vote for something that would have a negative impact on the Borough. The consideration has little to do with what past and present owners have or have not done with the site or what they will do in future. They have rights to redevelop the property like any other property owner in town. He finds the ADA compliance issues, lack of direct vehicular access to one of the lots and the ability to traverse the site the most compelling issues in favor of qualifying the site as an AINR. He does not think that the site plan approved in 1991 would be approved currently by this Board. He supported this at the Council level because it gives the Borough additional tool to assure that redevelopment is done properly.

(Mr. Simoff) Current ways to redevelop the property include the formal redevelopment process, using the current zoning or seeking a use variance. He feels torn between relying on use of the recently adopted downtown zoning and specifically focusing on redeveloping the subject properties.

(Mr. Horowitz) Possibly the site could be reorganized so that it is safer; not sure the site has reached the point of having to be found in need of redevelopment. It is not necessary to rely on accident reports to determine safety hazards exist. He finds it difficult to conclude that the extent of the parking lot deterioration and other identified deficiencies rise to a level that would justify an AINR designation. Properties deteriorate because their owners fail to maintain them. He believes, as Mr. McQueen asserted about himself, that all members of the Borough Council act in the best interest of the Borough. There is nothing that guarantees, even without an AINR designation, the owner will not develop the site, as permitted under the current zoning, in a way that everyone will be pleased with. In fact, under a redevelopment plan, the town would have more say about what is built than leaving it to the devices of a developer.

(Ms. Kellogg) Does not believe the extent of deterioration qualifies the site as blighted or in need of redevelopment. Fixing the parking lot to the approved 1991 site plan standard would probably not suffice today, primarily due to accessibility issues.

(Ms. Thompson) Finds the parking lot evidence thin and doesn't see any detrimental traffic spillover onto the public way from the site.

(Ms. Gardner) Does not feel that either the parking lot deterioration or the faulty arrangement of vehicular ingress and egress rise to the level of an AINR designation. Certain cosmetic improvements are possible.

(Chair Graham) The evidence presented has not proven that the site qualifies as an AINR; there is an absence of safety related issues; accessibility deficiencies could be remediated to the extent required given the age of the buildings and if an application for this site came before the Board they would be remediated; no doubt the site can be improved upon but it should not be designated an AINR. What the owner ultimately chooses to do with the property and what businesses remain at the site is largely up to the landlord.

Mr. Szabo stated in his comments that the prepared study is comprehensive and is based on what is observed on the ground today; probably a lot of the existing deficiencies wouldn't be addressed by enforcing the approved site plan; the prepared report is supported by case law and stands on its own merits. It is a judgement call by the Planning Board as to what it recommends to the Council and ultimately the Council's decision whether to proceed with redevelopment. The AINR designation provides the municipality with additional tools to address the issues Mr. Colley identified on the site; it allows for greater municipal control over the development of the property so that it is done in ways that benefit the community. It does not necessarily mean that buildings will be demolished or that particular tenants will be displaced. He restated that there is no redevelopment plan at this point and that the sole issue for the Board to decide is whether the identified conditions qualify the site as an AINR. Many other ancillary conditions and issues were raised in the hearing that have no bearing on the Board's charge. The study reflects what the statute requires and leaves the determination to the Planning Board.

Mr. DeMarco explained that the Council can affirm, modify or deny, in part or in total, whatever recommendation the Planning Board sends it as a result of this public hearing. If it takes the opposite stance than the Planning Board, the Council must justify on the record the reasons why.

At the Chair's request, a motion to further extend the meeting until 11:45 pm was made by Mr. Simoff and seconded by Mr. McQueen.

Voice vote:

All members voted in the affirmative.

As requested, Mr. Warner advised the Board on the methodology it should use in evaluating the report, the evidence, the expert testimony and the public comments presented, for arriving at a determination.

A motion that the Board not recommend either of the subject lots as a non-condemnation Area In Need of Redevelopment was made by Ms. Thompson and seconded by Ms. Gardner.

Roll call vote:

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

Those opposed: Mr. McQueen. Those abstaining: None.

Mr. Simoff explained the reasons for his vote were the significant amount of time spent by the Board in updating the downtown zoning and that this may set a precedent for other properties that may want to follow this route, that the zoning should be a more important issue.

Mr. Warner said he will prepare a resolution of memorialization for adoption at the next meeting. Mr. McQueen stated his belief that the Council would want both Mr. Colley and a member of the Planning Board present when the Council deliberates final disposition of the matter.

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

A. D26a Master plan consistency review of Ordinance #2022-1926 – Fines for ordinance violations; Introduced 6/27/22; Public hearing by Council to be scheduled for 8/8/22; Planning Board review scheduled for 7/28/22.

B. 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; Waiver requests, completeness determination & public hearing scheduled for 7/28/22.

C. Application #SP-242 – Mine Brook Rd. Urban Renewal Assoc., L.P.; PRELIMINARY & FINAL MAJOR (AFFORDABLE) RESIDENTIAL SITE PLAN; Mine Brook Road, B:80, L:15.38, Zone: AH-3; Received 6/30/22; Scheduled to be heard 8/11/22.

D. Application #SP-243 – Mine Brook Rd. Urban Renewal Assoc., L.P.; PRELIMINARY & FINAL MAJOR (AFFORDABLE) RESIDENTIAL SITE PLAN; 18 Mount Airy Road, B:124, L:1, Zone: AH-6; Received 6/30/22; Scheduled to be heard 8/11/22.

E. Application #SP-244 – Mine Brook Rd. Urban Renewal Assoc., L.P.; PRELIMINARY & FINAL MAJOR (AFFORDABLE) RESIDENTIAL SITE PLAN; 63 Bernards Avenue, B:102, L:12, Zone: AH-7; Received 6/30/22; Scheduled to be heard 8/11/22.

F. Application #SP-240 – Greyfield Management, LLC – Preliminary & Final Site Plan w/ Variances; 106 Mine Brook Road, B:97, L:3, Zone: D-C; Received 5/3/22; Public hearing scheduled for 8/25/22.

G. 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; Pending completeness review.

Mr. Mottola noted that a troubleshooting meeting is in the process of being scheduled for the three affordable housing applications scheduled to be heard on 8/11. Representatives of the applicant will confer with the Board's professionals and Borough and Board administrative officials in order to identify any potential impediments to obtaining expedited Board approvals prior to August 31st.

9. Business of Visitors, second opportunity: Sari Mazen, 37 Olcott Sq. thanked the Board for its work on the Palmer property AINR study. She also cited a couple of examples of buildings that had been retrofitted for greater handicapped accessibility.

10. Executive Session: None.

11. Adjournment: Chair Graham adjourned the meeting at 11:33 pm.

Respectfully submitted,

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

Keywords: parks-recreation-Equinet-Quimby-AINR-PI-Palmer-redevelopment-Olcott-Square.