

Borough of Bernardsville Board of Adjustment 2018 Annual Report

Board Members

David Greenebaum, Chairman – Term -Jan 2016-Dec 2019, appointed: 3/7/05. Elected Chairman January 15, 2018.

Edward English – Term: Jan 2016 - Dec 2019, appointed: 2/13/09. Elected Vice-Chairman 1/15/18.

Anthony Dello Russo – Term: Jan 2015 – Dec 2018, appointed: 2/25/13.

Jeff Sailliard — Term: Jan 2015 – Dec 2018, appointed: 1/5/10.

Thomas Carton – Term: Jan 2017- Dec 2020; appointed 1/7/13.

Diana Kramer – Term: Jan 2018 – Dec 2021, appointed 1/4/11.

Paul Sedlak – Term: Jan 2018 – Dec 2021, appointed: 4/13/15

Rich Traynor – Alternate #1 - Term: Jan 2018 – Dec 2019, appointed 1/7/14.

Edward McDowell – Alternate #2 – Term: Jan 2017 – Dec 2018, appointed 1/29/15.

Vacant – Alternate #3 - Term: Jan 2018 – Dec 2019, David Yale appointed 10/21/18, Resigned 1/2/19.

Vacant – Alternate #4 - Term: Jan 2017 – Dec 2018.

Board Professionals

Louis P. Rago, Esq., Board Attorney.

John P. Szabo, Jr. P.P., Burgis Associates, Board Planner.

Robert C. Brightly, P.E., Ferriero Engineering, Board Engineer.

Frank Mottola, Board Administrative Officer & Recording Secretary.

Purpose

Pursuant to the New Jersey Municipal Land Use Law, the Borough of Bernardsville Zoning Board of Adjustment is required to prepare an annual report and to adopt the same for submission to the Mayor, Council and Planning Board. Specifically, N.J.S.A. 40:55D-70.1 states: “The board of adjustment shall, at least once a year, review its decisions on applications and appeals for variances and prepare and adopt by resolution a report of its finding on zoning ordinance provisions which were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any. The board of adjustment shall send copies of the report and resolution to the governing body and planning board.”

The following provides the annual report for the Bernardsville Board of Adjustment for the year 2018.

Applications

A. Overview:

The Board of Adjustment reviews applications brought before it with the objective of reducing the intensity and quantity of variances requested. The Board accomplishes this by working with applicants, where necessary, to develop improved designs. Through the process, the number and/or intensity of variances initially requested by an applicant is often reduced. Additionally, the Board generally places reasonable and appropriate conditions upon its variance approvals to help negate or minimize any potential negative impacts to the zoning plan and/or surrounding properties.

There were 15 meetings held during 2018, including the annual joint meeting with the Borough Council and Planning Board held on January 22, 2018.

Fourteen variance applications were received in 2018. Nine variances were approved in 2017. One application from 2015 remains active. A summary of the applications is below.

B. Summary Table of Applications:

Category/Description	# of Applications
Applications for variances filed and approved in 2018	9
Applications for variances filed and withdrawn in 2018	1
Applications for variances or extensions filed and denied in 2018	0
Applications for variances filed in 2018 to be heard in 2019	1
Applications for variances filed in 2018 pending completeness review	3
Applications for variances in litigation	1

C. Application Descriptions:

1. 15-11 Bernardsville Petroleum, LLC. C&D Variances. 135 Morristown Road, B-140, L-1, Zone: C-1. Application received 12/28/15; deemed complete 1/14/16. Minor non-residential site plan to add convenience store. Variances required: conditional use, setbacks & loading in front yard. 9 meetings held during 2016 with much public attendance/commentary. Concluded and denied 1/17/17. Board decision appealed to State Superior Court. Court remanded application back to Zoning Board with guidance 3/19/2018. Re-deliberation scheduled for 2/19/19.
2. 18-01 Roberts; FAR, lot coverage and setback variances requested for residential addition to historic Tommy Dorsey mansion; Approved.
3. 18-02 Fitzpatrick; Front and side yard variances requested for new detached 2 car garage; Approved.
4. 18-03 Horsefield; Side and rear yard variances requested to retain nonconforming shed; Approved.
5. 18-04 Thoma; Side and rear yard variances requested to retain nonconforming shed; Approved.
6. 18-05 York; Additions to residence; application withdrawn.
7. 18-06 Claremont Commons – 124; Use, height and setback variance request; redesign of previously approved application; Approved.
8. 18-07 Claremont Commons – 126; Use, height and setback variance request; redesign of previously approved application; Approved.
9. 18-08 Claremont Manor; Multi-family residential, Use, height and other dimensional variance requests; hearings initiated in September 2018 and will continue in 2019.
10. 18-09 Salovaara; request expansion of accessory structure in front yard (solar array); Existing accessory structure approved by variance in 2009; Approved.
11. 18-10 Falivene; Steep slope disturbance and rear yard setback variance requested for pool construction; Approved.
12. 18-11 Trick; Front and side yard setback variances requested for rebuild of accessory garage structure; Will be heard in 2019.
13. 18-12 Persky; Certificate of Nonconforming Use and/or Use Variance for existing three-family dwelling; Pending completeness review.
14. 18-13 Cowley; Dimensional Variance for Single Family Residence Addition; Pending completeness review.
15. 18-14 Crooks; Dimensional Variance for Single Family Residence Addition; Pending completeness review.

D. Attendance:

Members	Meetings Attended	Attendance Percentage
Thomas Carton	12	80%
Anthony Dello Russo	15	100%
Ed English	14	93%
David Greenebaum	14	93%
Diana Kramer	12	80%
Jeff Sailliard	12	80%
Paul Sedlak	9	60%

Alternates	Meetings Attended	Attendance Percentage
Rich Traynor	12	80%
Ed McDowell	12	80%
Vacant 3	N/A	N/A
Vacant 4	N/A	N/A

Resignations	Meetings Attended	Resignation Date
Russell Giglio	1	4/12/18
Christopher Otteau	1	5/31/18
David Yale	1	1/2/19

Total meetings = 15

E. Members/Alternates Requirements:

1. There are currently two vacancies for an Alternate Member.
2. All members of the Zoning Board have completed the NJ required training for board members.
3. All members of the Zoning Board have completed the MELJIF personal liability training.

F. Litigation:

Bernardsville, Petroleum, LLC has appealed the Board's denial of Application #15-11. State Superior Court heard the appeal and remanded the application back to the board with guidance. The application will be re-deliberated in 2019.

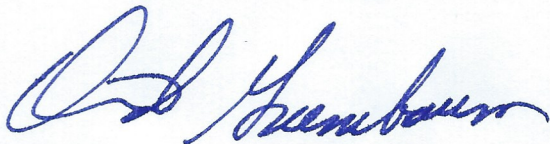
G. Observations/Recommendations from Members:

1. The Board of Adjustment respectfully requests that the Borough Council pursue more rigorous and consistent zoning enforcement throughout the Borough.
2. The Board of Adjustment respectfully requests that the Borough Council and Planning Board consider evaluating and addressing existing non-conforming uses throughout the Borough in the Borough Master Plan.
3. The Board of Adjustment respectfully requests that the Borough Planning Board consider developing architectural and streetscape design standards for the Borough's Business and Commercial zone districts for inclusion in the master plan and that the Borough Council subsequently consider adoption of such standards as zoning and/or site plan development regulations by ordinance.
4. The Board of Adjustment respectfully requests the Borough Council and Borough Planning board address the comments attached from the Board of Adjustment Planner clarifying swimming pools as structures in the Borough Zoning Ordinance.

H. Escrow Accounts:

The Administrative Officer continued to work (in conjunction with the Finance Office) with due diligence to close out accounts in a timely manner.

Respectfully submitted on behalf of the entire Zoning Board of Adjustment,



David Greenebaum, Chairman
Zoning Board of Adjustment
Borough of Bernardsville

Encl: e-mail from John Szabo to Frank Mottola

From: John Szabo [<mailto:JS@burgis.com>]
Sent: Tuesday, November 20, 2018 2:40 PM
To: Frank Mottola <fmottola@bernardsvilleboro.org>
Subject: Annual Notice Language: Accessory Structures and Buildings

Good Afternoon Frank,

As requested by the Board of Adjustment Chairman, I offer the following language for the annual report regarding accessory structures and buildings:

When reviewing an application for a swimming pool, it has come to the Board's attention that a clarification is needed to identify swimming pools as structures subject to zoning setbacks. Specifically, the Bernardsville Land Use

Ordinance per Article 1.3.2 defines structures as “

Structure shall mean a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

Clearly swimming pools and patios would fall within this definition. However, a closer examination of the Land Use Ordinance, specifically Article 12 “Zoning,” does not reference or otherwise regulate “structures” such as swimming pools and patios. The Borough has relied on Article 12, Zoning, Supplementary Regulations and General Provisions, specifically Section 12-23.1 regulating “Accessory **Buildings.**” (emphasis added). There is no other reference to structures. Swimming pools and patios do not satisfy the ordinance's definition of “building” which reads as follows (see Article 1.3.2):

*Building shall mean a combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a **roof.** (emphasis added).*

This difference in definition between structures and buildings creates a disconnect between zoning and accessory structures that are not roofed and therefore, not considered buildings subject to the zoning regulations of Section 12-23.1. A review of the Land Use Ordinance does not provide regulations for unroofed structures. The Board respectfully recommends that the ordinance be amended to clarify that unroofed structures such as swimming pools and patios are included within the regulations of 12-23.1 by amending the title of the Section to read “Accessory Buildings **and Structures**” or alternatively, by adding a new article section specifically regulating Swimming Pools and patios.

This is just suggested language subject to any wordsmithing deemed appropriate by the Board.

John P. Szabo, Jr. PP, AICP
Senior Associate

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