

**BOROUGH OF WATCHUNG**  
**BOARD OF ADJUSTMENT**  
DANIEL CRONHEIM, CHAIRMAN

**Regular Meeting**  
**March 14, 2019**

**OFFICIAL MINUTES**  
**Adopted 11, 2019**

Chairman Cronheim called the Regular Meeting to order at 7:38 p.m. Board members present were Ms. Fechtner, Mr. Dallas, Mr. Brown, Mr. Kita, Mr. Panzarella and Mr. Lauerman. Also present were Amanda Wolfe, Esq., Substitute Board Attorney, David Stires, P.E., Board Engineer, Ed Bennett, Zoning Official and Theresa Snyder, Board Clerk. There were 9 members from the public present. Steve Warner, Esq. arrived at 8:00 p.m.

Chairman Cronheim read the statement indicating the meeting was being conducted according to the Sunshine Law, the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. He then led the flag salute to the American flag, and the Board members identified themselves for the record.

**APPROVAL OF MINUTES**

On motion by Mr. Lauerman, seconded by Mr. Dallas, the February 5, 2019, Regular Meeting minutes were accepted and carried on voice vote.

**RESOLUTIONS**

Resolution BA 19-R10  
Amended Board Rules

On motion by Chairman Cronheim, seconded by Mr. Brown, the Board adopted the Revised Board Rules based on the following roll call vote:

Roll Call:

Ayes: Ms. Fechtner, Mr. Dallas, Mr. Brown, Mr. Panzarella,  
Mr. Kita, Mr. Lauerman and Chairman Cronheim

Nays:  
Not Eligible:  
Abstain:  
Absent: Mr. Hunsinger

On motion by Mr. Dallas, seconded by Mr. Kita, the Board adopted the Resolution for the Revised Board Rules based on the following roll call vote:

Roll Call:

Ayes: Ms. Fechtner, Mr. Dallas, Mr. Brown, Mr. Panzarella,  
Mr. Kita, Mr. Lauerman and Chairman Cronheim

Nays:  
Not Eligible:  
Abstain:  
Absent: Mr. Hunsinger

Resolution BA 19-R8  
CASE NO.: BA 18-17: PANERA  
ADDRESS: 1680 ROUTE 22 E  
BLOCK: 6201 LOT: 3  
HD ZONE  
Approved 2/5/19

On motion by Chairman Cronheim, seconded by Ms. Fechtner, the Board adopted the Resolution based on the following roll call vote:

Roll Call:

Ayes: Ms. Fechtner, Mr. Dallas, Mr. Brown, Mr. Panzarella,  
Mr. Kita, Mr. Lauerman and Chairman Cronheim

Nays:  
Not Eligible:  
Abstain:  
Absent: Mr. Hunsinger

Resolution BA 19-R9  
BA 19-02; WILLIAMS  
ED & SHARON WILLIAMS  
740 MOUNTAIN BLVD.  
BLOCK: 102 LOT: 6.01  
BB ZONE  
Interpretation 2/5/19

On motion by Chairman Cronheim, seconded by Mr. Lauerman, the Board adopted the Resolution based on the following roll call vote:

Roll Call:

Ayes: Ms. Fechtner, Mr. Dallas, Mr. Brown, Mr. Panzarella,  
Mr. Kita, Mr. Lauerman and Chairman Cronheim

Nays:  
Not Eligible:  
Abstain:  
Absent: Mr. Hunsinger

**REQUESTS**

Courtesy Review BOE

It was on the record that the request for the Courtesy Review of Board of Education for Bayberry School Playground was mistakenly placed on the Agenda. Mr. Titus was asked to leave prior to the commencement of the meeting citing that the Courtesy Review will be handled by the Planning Board at their upcoming meeting the following Tuesday.

Bed Bath and Beyond

Mr. Robert Eckhardt, representative of Bed Bath and Beyond was sworn in to give testimony. They were requesting (4) 8' x 40' containers and (2) additional 8' x 20' open top dumpsters be placed adjacent to the store for a 3 month period. He explained that Bed Bath and Beyond is revitalizing their store with a merchandise driven appeal. The Watchung location is the first test store. The company is looking to have a more open look to the store. He said he would re-apply for the temporary sign requests at a later date.

Mr. Bennett opined that the Ordinance did not specifically address the issue of dumpsters. He did not see any adverse effects to traffic or emergency service.

The Board granted approval for a 30 day period. Mr. Eckhardt would need to submit requests for additional time on a month to month basis.

CASE NO.: BA 18-05; BIVIANO  
ADDRESS: 50 CENTURY LANE  
BLOCK: 4301 LOT: 2.02  
APPROVED 6/14/18

The applicant requested an updated Resolution to include the new impervious coverage values that reflected the slope modifications. Because relief for excess impervious coverage was not requested in the original noticed applicant's hearing and therefore not repeated in the resolution, the applicant would be required to re-apply and re-notice.

On motion by Ms. Fechtner, seconded by Mr. Brown, the Board unanimously granted The Garden Club of Watchung permission to post signs for their annual plant sale that will be held on May 11, 2019. They would like to place the signs around town on May 4<sup>th</sup> and remove them on May 12<sup>th</sup>.

On motion by Chairman Cronheim, seconded by Mr. Lauerman, the Board unanimously granted The Watchung Little League permission to post signs for their annual registration until April 15, 2019.

### **CONTINUED APPLICATIONS**

Case No. BA18-01; Wilderness Trails (RETS Partners, LLC)  
833 Mountain Blvd.  
Block 201 Lot 17  
RR Zone

Mr. Whitelaw, Esq. gave a brief description of the revised plans. The plans went from 9 units to 8 units.

Mr. Grazzale, P.P., still under oath, explained to the Board the changes documented on the revised plans. The new plans eliminated one market rate unit in Watchung. There would be a total of 12 units on the subject property. The buildings were moved 5ft. resulting in a 30 ft. setback from the property line that abuts the homes on Wildwood Terrace. The K turn was eliminated, and the road was extended. The impervious coverage was reduced by 2.8% overall with a reduction of impervious coverage in the Watchung portion of 3.7%. The NJDEP riparian zone will receive a 50 ft. buffer. The applicant stipulated to the acquiring this verification from DEP which would be included in the site plan portion of this bi-furcated application. There would be a generous set-aside of 50% affordable housing for the Borough of Watchung.

Mr. Cohen, contended that the revised plans did not impact the variances needed for this application.

On question of the Board, Mr. Grazzale opined that the road will be extended 40 ft. past the last driveway. They removed the unit furthest south and pushed the building closer to the roadway easement. The percentage of the unit count changed from 9 to 8 and allows for 50% to COAH.

On question of the Board, Mr. Whitelaw explained that the Warren portion did not get approved; however, that night Warren Township approved a re-zoning of the Warren portion of the property to include multi-family use. He assured the Board, that regardless of what happens in the Warren portion, they would continue with the same plans in Watchung.

Mr. Berlant, still under oath, opined that through the whole process the plans have evolved to be more suited to what might be acceptable to the neighbors. They originally proposed one large building which has since been separated and reduced. In the Warren portion he was doing a 50% set aside and wanted to do the same in Watchung. Original plans had a 44% set aside. He was not here for site plan approval. They shifted the building closer to the road and were able to gain another 5 ft. The driveway is 20 ft. There is a sidewalk and roadway. He had met with the fire chief who asked the roadway extend for 30 ft. beyond the last building. They would be doing 40 ft. He stipulated to improving the roadway past the proposed 40 ft., if required. He wanted to make the Borough happy. Fire trucks would back up and make a K turn in the office building parking lot. They proposed the installation of 2 fire hydrants. He was in front of the Board for a Use variance and density variance. Hauser Lane is currently 12 ft. wide in a 20 ft. right of way. He would widened it to 20 ft. In order to do that, he is creating an easement on his property. He would maintain Hauser Lane as per the request of Greenbrook Township.

On question of Mr. Lauerman, Mr. Berlant stipulated to a condition that if this was brought to site plan, he would provide a copy of the joint services agreement between Watchung, Warren and Greenbrook as it relates to emergency services.

On question of Mr. Warner, Mr. Berlant explained that the former proposed building width was 22 ½ ft. wide, the proposed building width would be 25 ft. The garages were very tight. They made the Market Rate Units wider. There would be no changes to the COAH units. There was a shortening overall of 12 ft. or approximately 6 ft. from each building.

On question of Ms. Fetchner, Mr. Warner detailed the variances the applicant was seeking and the obligations of the Board if granting approval. The applicant submitted a Section 76b Bifurcated Use Variance/Site Plan application. The applicant required three Use Variances-a D(1) Variance for multi-family dwellings not permitted in a residential zone, a D(1) Variance for a commercial parking lot to be used as a lot in Warren, not permitted in a residential zone and a D(5) Variance for Density for the number of dwelling units to the acre. If the Board granted the Use variances, they would be bound to multi-family use, tailored to 8 units, and the D(5) density correspondently to 8 units. If the Board granted variances as requested, they would be approving multi-family dwellings of 8 units and density relating to the 8 units.

Mr. Whitelaw opined that there will be variation to the site plan as the impervious coverage amounts could change during that time.

On question of Mr. Cohen, that the number of units was reduced from 9 to 8 because applicant thought 9 was too dense, Mr. Berlant responded that he was trying to reduce the size of the building to look more residential and wanted to compromise for the neighbors. It is approximately a 10% reduction. He is not willing to reduce it further.

Mr. Cohen contended that a tip of a building extending into another municipality might require another variance.

With there being no comments from the public, the public portion was closed.

With there being no additional witnesses both the applicant and opposing counsel agreed to closing statements.

Mr. Cohen gave his closing statement. He opined that this was a long application. He represented many people, and thought this was the most aggressive application for Use variances. The lot was not conforming for its permitted use. The proofs are basically the same for granting 8 or 9 units. The process of the application did get into a lot of things that would be site plan related. The applicant had a burden of proof to show that the property was suited for the D Variances. He opined that Mr. McDonough did not prove it to be an inherently beneficial use, and it was not a hardship. The applicant was offering affordable housing, but Mr. Cohen opined that it was not a reason to build whatever one wants wherever they want under the guise of affordable housing. He opined that this use was not suited because they would need at least 6 bulk variances. There would be a negative affect on the neighborhood. His clients on Wildwood Terrace bought their homes with the knowledge that they were purchasing in a single-family zone. Now someone wanted to build 8 units in violation of variance use. He opined that there was no testimony to the impact on the property values. The lot contains many mature trees which would be cleared. He opined that Page 5 of the Master Plans says that any new development or re-development density should be consistent with current zoning. Page 25 of the Master Plans promotes the continuance of a rural, suburban atmosphere. He opined that squeezing 8 units on less than an acre of property does not enhance the use. There would be a drastic effect on the homes on Wildwood Terrace. No one bought their homes thinking they would back up to multi-family units with a parking lot. This has a negative effect on the surrounding properties. He urged the Board to be convinced that this was a better use of the property. He asked the Board to reject the application and deny the application.

Mr. Whitelaw gave his closing statement. He opined that the Warren portion was zoned commercial in 1985. At the time, it was a single family use. There was an application, and the property became an office. It was commercial property in Warren. There was an office downstairs and a house upstairs. It has not been a single family home since 1985. The Master Plan talks about residential characteristics. This proposal changes the use of the land back to residential, although it will not be a single-family dwelling. The parking lot is one lot. They had Mr. Polyniak from Dolen & Dolen give a traffic testimony. There was limited trip generation. The COAH contribution by definition is part of the "general welfare". A 50% contribution is a super contribution. It is a very significant number. The site plan variances are for later. Mr. McDonough had given long testimony and tests under Medici and D(1) and D(5) standards. They understood the neighbors objected. The applicant will do what is necessary to the best of their ability to buffer the rear yard of the townhomes to the rear yards of the neighbors. Any development on this property will impact the neighbors. It allows for a very difficult property to be rejuvenated.

The Board took a recess.

Mr. Warner confirmed that both sides rested, and the Board needed to deliberate. He reminded the Board of the three D Variances they would be voting to approve or deny. The Board needed 5 affirmative votes to approve. The vote would be for all 3 variances. He re-affirmed that each member was eligible to vote.

Chairman Cronheim began deliberation. He thanked the Board, applicant and opposing Counsel for the polite way they conducted themselves. He reminded everyone that this application was in process for over a year. He agreed that there were 3 D Variances up for approval. He opined that Mr. Ritter gave the most credible testimony in that he said this proposal was a re-zoning. In January of 2018 the Borough was going through COAH talks. Other properties were re-zoned. This was presented to the Special Master. This property was not submitted. He opined that the proposal was an extraordinary change. The property was non-conforming. He gave the applicant credit to go to Warren and get that portion re-zoned. He felt it did not meet the positive criteria and was not particularly suited. Affordable Housing is useful but not inherently beneficial. The re-examination of the Master Plan preserves the current zoning. He opined that the applicant did not meet the burden of proof.

Ms. Fetchner opined that the zoning was put into place to keep Watchung rural. She was sympathetic to the neighbors already there. The density was troublesome. The Lot was undersized. She was sure that the homes built would be lovely. She opined that the proposal was good for the property but not for the neighbors.

Mr. Dallas opined that it was tough no matter what was intended to be placed on the property. If the property was reverted back to commercial use, the neighbors would be only looking at parking lots. He would approve it. He opined it was the best use of the property.

Mr. Lauerman opined that the application was professionally presented. He said no one in the room had crawled through the property more than he had. He was trying to make sense of the proposal. He opined that it was too much for too little.

Mr. Kita opined that it was a crazy piece of property. The alternative would be far worse for the neighbors. He was inclined to accept.

Mr. Panzarella opined that it was a tough property. He thought it was too dense. He would decline. He wouldn't want to hurt the neighbors.

Mr. Brown opined that he received a real education on complex land use law and multi-municipalities. He did not agree with the parking being an issue. He gave Mr. Berlant credit for trying to reduce the impact on the neighbors. The COAH issue is important. It is always an issue for a town. He opined that they have to help fill requirements. If the zoning went back to commercial, it would be more of a detriment.

The motion by Mr. Dallas to grant the Use Variances needed for this application, seconded by Mr. Kita, received 3 affirmative votes resulting in a statutory denial based on the following roll call vote:

Roll Call:

Ayes:	Mr. Dallas, Mr. Brown and Mr. Kita
Nays:	Ms. Fechtner, Mr. Panzarella, Mr. Lauerman And Chairman Cronheim
Not Eligible:	
Abstain:	
Absent:	Mr. Hunsinger

**ADJOURN**

On motion by Mr. Brown, seconded by Chairman Cronheim, the Board unanimously voted to adjourn the meeting at 9:43 p.m.

Respectfully Submitted,  
*Theresa Snyder*  
Theresa Snyder  
Board Clerk