

**RESOLUTION OF MEMORIALIZATION
BOROUGH OF BERNARDSVILLE ZONING BOARD OF ADJUSTMENT
SOMERSET COUNTY, NEW JERSEY
DENIAL OF USE VARIANCE, DIMENSIONAL VARIANCES, AND PRELIMINARY
AND FINAL SITE PLAN**

**MATTER OF NEW JERSEY AMERICAN WATER COMPANY, INC.
APPLICATION #20-01**

Denied: October 4th, 2021 Memorialized: December 6th, 2021

WHEREAS, an Application for a use variance, dimensional variances, and preliminary and final site plan approval has been filed by New Jersey American Water Company, Inc.(hereinafter designated the "Applicant") to the Borough of Bernardsville Zoning Board of Adjustment (hereinafter designated the "Board") for property located at 425 Mendham Road, Borough of Bernardsville, New Jersey, and more specifically known as Block 5, Lot 5 on the Tax Map of the Borough of Bernardsville (hereinafter designated the "Borough"), Somerset County, New Jersey, with said premises being located in the R-1-10 Zone (10 acre minimum) where public utilities are regulated as a conditional use. In that the Applicant does not satisfy the conditional use requirements for public utilities in this zone, a use variance is required pursuant to N.J.S.A 40:55D-70d(3). Bulk variance relief is also required for other deficiencies; and

WHEREAS, a public hearing was held before the Board on November 16th, 2020, and March 1st, April 5th, June 21st, August 2nd, September 20th, and October 4th, 2021 with regard to this Application; and

WHEREAS, the Board has heard the testimony and evidence presented by the Applicant, the objectors, the witnesses, consultants, and with the public having had a full opportunity to participate; and

WHEREAS, the Applicant filed proof that notice of the hearing was given as required by N.J.S.A. 40:55D-12; and

WHEREAS, a complete Application has been filed, the fees required by Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Adjustment of the Borough of Bernardsville, County of Somerset and State of New Jersey on the 6th day of December, 2021 made the following Findings and Conclusions with regard to the Application:

1. The Applicant provided adequate notice of the Application and the hearing in accordance with statute.

2. The Applicant was represented by Niall J. O'Brien, Esq. In addition to Mr. O'Brien, David B. Amerikaner, Esq. represented objector Paul Savas, and Richard Schkolnick, Esq., represented objector Karen Martin. Both Mr. Amerikaner and Mr. Schkolnick fully participated in this Application.
3. In reviewing this development proposal the Board took into consideration the following;
 - (a) The Application and all Attachments, including the original Site Plan filed by the Applicant; revised Site Plans; Letters and Reports of the Applicant's Consultants; photographs of the subject property and the current and proposed water tower; testimony of the Applicant's witnesses; and Exhibits entered into evidence.
 - (b) Letter Reports and Memorandum of the Board Consultants and the Consultants for the Borough where relevant to this Application, including testimony.
 - (c) Correspondence from the Somerset County Planning Board and relevant State Agencies.
 - (d) Testimony from all witnesses and experts, including the objectors.
 - (e) Applicant's Exhibits A-1 through A-37 entered into evidence.
 - (f) Objector's Exhibits O-1 and O-2 entered into evidence.
4. The subject property is located at 425 Mendham Road and is a land locked parcel containing 17,677 square feet, or approximately 0.406 acres. The property is currently developed with a water storage tank, surrounding chain link fencing, and includes a 20 foot wide gravel right-of-way through Lot 3 for access and for pipeline purposes. The existing tank is a 250,000 gallon water storage tank, and the Applicant is proposing to demolish this and replace it with a 750,000 gallon fluted column water storage tank. The diameter of the existing tank is 42 feet, and the diameter of the proposed tank is 42 feet for the pedestal and 64 feet for the tank. The zoning table on the Applicant's Site Plan indicates that the existing water tank has a roof height of 21 feet, a solar panel height of 29 feet, and an antenna height of 56 feet. The proposed tank has a overflow elevation height of 67 feet, a roof height of 74 feet, a railing height of 82 feet, and a antenna height of 83 feet. The proposed storage tank is intended to replace the existing Fenwick storage tank and will primarily provide storage/supply for the Mendham Gradient. The proposed storage tank will also provide additional water supply to the Mendham/Chester area of the water system.

5. In addition to a conditional use variance pursuant to N.J.S.A 40:55D-70d(3) regarding deviations from conditional use standards, the Applicant also requires the following use and bulk variance relief;
- a) Proposed tank height- where a maximum of 35 feet is permitted for structures in the R-1-10 Zone District, and where the Applicant is proposing a overall height to the top of the antenna of 83 feet.
 - b) Lot size- where a minimum lot size of 435,600 square feet is required, and where the existing lot size is 17,667 square feet.
 - c) Impervious coverage- where a maximum of 4,419 square feet of impervious coverage is allowed, and where 4,645 square feet is proposed.
 - d) Front yard setback- where a setback of 125 feet is required, and where the Applicant is proposing a setback of 24 feet.
 - e) Side yard setbacks- where a minimum side yard setback of 75 feet is required, and where the Applicant is proposing setbacks of 20.5 feet and 23.7 feet.
 - f) Rear yard setback- where a minimum rear yard setback of 100 feet is required, and where the Applicant is proposing a rear yard setback of 57 feet.
 - g) Minimum lot shape (circle diameter)- where a 475 foot diameter is required and where the Applicant is proposing 105 feet.
 - h) Minimum floor area- where a minimum floor area of 1,500 square feet is required, and where a floor area of 1,408 square feet is proposed.
 - i) Maximum permitted disturbances- regarding slopes of 25 to 29.99%, and in excess of 30% pursuant to the Borough Steep Slope disturbance requirements.
 - j) Does not abut a public street.
6. Attached hereto, and made a part of this Resolution, is a copy of a Memorandum from the Bernardsville Historic Preservation Advisory Committee (HPAC) dated November 13th, 2020 which was part of the Application file, and which was provided to all parties. Further, also attached hereto and made a part of this Resolution, are photographs and photographic renderings that were entered into evidence as part of the Application. These photographs and photographic rendering depict the current water tower, the proposed water tower, a view of the proposed water tower from adjoining properties, and a view of the proposed water tower from the driveway of objector Karen Martin.

7. During the course of the 7 hearings on this matter the Applicant called numerous witnesses, and several of them testified on multiple occasions. There were also numerous questions by the members of the Board, the public, and the Attorneys representing the objectors.
8. Bryan D. Slota, a licensed engineer employed by the Applicant and the project manager for the Applicant, testified on behalf of the Application. Mr. Slota stated that the current water tower site is in need of approximately 1 million gallons of water per day for purposes of domestic water service and firefighting ability. He indicated that the current facility needs to be upgraded in order to provide more pressure, water storage, and the ability to satisfy the demands of the area. He stated that the existing water tank contains 250,000 gallons of water and it was built in the 1950s, and the proposed tank will hold 750,000 gallons of water.

Mr. Slota indicated that the Applicant purchased the subject property in 1992 or 1993, and that it is a common practice to locate new tanks where they already exist. He stated that the overall tank height is a "function of hydraulics" and that the height at this location is both needed and appropriate. Gravity flows to homes and for emergency services are needed, rather than pump stations. The witness indicated that what is driving this renovation is that the Applicant will be losing the water supply provided by the Morris County Municipal Utilities Authority (MCMUA) and that, because of this, a new tank is required to store more water. He stated that the Applicant's current contract with the MCMUA will terminate in January, 2022 in that the MCMUA is not renewing the contract.

In response to questions from members of the Board and the public, Mr. Slota commented that he was unsure why the MCMUA was in the process of terminating its water contract with the Applicant. Mr. Slota was also unsure as to what other site locations the Applicant reviewed and analyzed as an alternate location for the new water tower. It was his opinion that the construction of a new water tower on the subject property would have minimal impacts even though the tank was basically tripling in size. He stated that building a new tank in the same location as a existing tank would be the least intrusive and disruptive to both the site and the neighborhood.

9. Edward J. DiMond, a licensed engineer employed by Buchart Horn, Inc., testified on behalf of the Application. Mr. DiMond indicated to the Board that his major areas of responsibility included design and permitting for the proposed project. Mr. DiMond described the access drive from Mendham Road to the site, and stated that the subject property is a land-locked lot only accessible by easement, approximately 17,667 square feet in size. The immediately surrounding area is wooded, and he was of the opinion that the subject property was adequate in size for what the Applicant was proposing. The witness discussed the proposed retaining wall and fencing, and stated that a new tank with a much larger capacity would meet peak demands for the service area and provide more fire

protection. He stated that there were no environmental issues present on the site, and also discussed steep slopes. The witness commented that a retaining wall would be needed to keep the subject area flat in order to aid in the construction, and there would be no significant noise, odors, dust or traffic in the event the Application was approved. As far as tree removal, Mr. DiMond stated that approximately 15 trees will be removed and that an appropriate number of trees would be replanted in their place.

In response to questions, the witness indicated that water runoff would be directed to dry wells that will be constructed on-site, and also conceded that the top of the water tower would be approximately 100 feet higher than adjacent Mendham Road. The witness stated that there was no construction traffic study done, in that the Board was concerned about disruption from the construction process and how traffic would be impacted. The witness also stated that the proposed height of the tank was the lowest it could be to function properly, and also stated that the impervious coverage proposed would exceed the 25% maximum permitted in the zone.

10. Vince Monaco, a licensed engineer employed by the Applicant and a long range asset planning consultant for the Applicant, testified on behalf of the Application. Mr. Monaco also indicated that the Applicant's current contract with the MCMUA expires in January of 2022, and stated that the MCMUA is not inclined to extend the contract any further, thus necessitating this Application for a larger water tank with more storage capacity. The witness stated that the Applicant did not want to terminate the agreement with the MCMUA. He also stated that the Applicant was still negotiating for an extension to the agreement and conceded that the "cost of water" was a factor in the negotiation.

In response to certain questions Mr. Monaco indicated that, apparently, the MCMUA is operating with a current \$54,000 loss regarding their agreement with the Applicant and, based upon Exhibit O-1 as entered into evidence, these negotiations appear to relate to "money".

11. Dana Wright, an engineer employed by the applicant and "team lead" for the Applicant in Morris County, testified on behalf of the Application. Mr. Wright stated that he works with hydraulic modeling and tank design, and stated that the 750,000 gallon tank proposed "looks ahead" approximately 15 years in terms of adequacy. In terms of possible alternatives, the witness stated that there were no other water purveyors available; that enlarging the base of the existing tank and lowering the height would not be adequate in that the height is needed for water pressure; that increasing the pipe size would not work; and that although the Applicant did "briefly" look at other sites, there were no reports prepared, no analysis, and no modeling of any other site. His reasons for the current location being considered ideal are that the tank is already in place and that the Applicant owns the property.

In response to questions by the Board and the objectors, the witness conceded that Bernardsville was not benefiting from this proposed water tank as much as it should, in that 20% of the current and proposed water usage would be available to Bernardsville and Bernardsville residents, while 80% of the water usage would be for Mendham and Mendham residents. The witness stated that elevation criteria was discussed by the Applicant for other sites, however, nothing was "written down" and that the Applicant never did a block and lot specific investigation for an alternate site for the water tower. Questioning by the attorneys for the objectors and by the Board Consulting Engineer, Kevin J. Boswell, requested that the Applicant provide a map and specific data for other sites considered for this project, and also that analytic modeling be provided to the Board for other possible locations. In response to this, the Attorney for the Applicant indicated that the Applicant would not produce or develop a list of alternate site analysis.

12. Edward J. DiMond, was recalled as a witness. Mr. DiMond discussed with the Board a balloon test that had previously been conducted in order for the Board to get a better sense of the proposed height of the new water tower. The witness also produced photographic renderings of a proposed tank, and also discussed various colors that the tower could be painted, in addition to a view of the tower from various neighboring locations. The witness also discussed aerial photography of the site, and tree removal and replanting. It was Mr. DiMond's best estimate that, once approved, construction of the tank could take approximately 400 days, with an additional 4 months for the bidding process and other preliminary preparations.

Kevin J. Boswell, the Board Consulting engineer, questioned the witness and it was determined that the Applicant, despite being requested, has never provided to the Board any DEP permitting Applications. Mr. Boswell stated that without certain information that he has requested from the Applicant, he was limited in being able to provide assistance to the Board with regard to any logical analysis. Further, with regard to alternate sites, Mr. DiMond stated that he "didn't know" if any other sites were reviewed, analyzed and modeled. Further, the Applicant's Attorney made it clear that the Applicant was not looking at any alternate site for this project. Again, Mr. Boswell stated that the Board would need more information from the Applicant in order to make a reasonable determination as to both the negotiations with the MCMUA and the water tower analysis.

13. Vince Monaco was recalled as a witness and indicated that, although he is the negotiator for the Applicant with the MCMUA regarding a contract extension, he was unaware of the status. He also confirmed that no alternate sites were being considered by the Applicant as far as he knew.
14. Edward J. DiMond, was recalled and discussed revised Site Plans with the Board, and also landscaping and the planting of trees in the event the Application was approved.

15. Bryan D. Slota, was recalled and discussed with the Board photographs of the current water tower, and photographic renderings of the proposed tower from various points in the neighborhood.
16. Dana Wright was recalled as a witness and briefly discussed the Oak Place Pumping Station and its relationship to the existing water supply tower. Further, Kevin Boswell stated to the witness that there were many open items still remaining for the Board to consider, and the Applicant would be well advised to attempt to extend the agreement with the MCMUA.
17. Tiffany Morrissey, a licensed land use planner, testified on behalf of the Application. Ms. Morrissey stated that she had observed all the meetings and had reviewed the documents presented during the hearing. She stated that the Applicant's proposal was a permitted conditional use in this zone because of its public utility status and stated that, in addition to a conditional use variance, bulk variances were needed in addition to preliminary and final site plan approval. Although the bulk variances were previously set forth in this Resolution. Ms. Morrissey stated that the Applicant exceeded the maximum lot coverage of 25%; exceeded the height requirements; exceeded the minimum setback requirements as previously set forth in this Resolution; could not provide off-street parking; was within 300 feet of a residential house; and she also conceded that it was the burden of the Applicant to show that the proposed use could function appropriately and efficiently given the lack of total compliance with the conditions set forth in the Ordinance. The witness discussed the Coventry Square case, and the standards set forth therein for considering uses that do not meet all of the conditions of a Ordinance, and also stated that, in her view, this was an inherently beneficial use given its nature as a regional water supplier. The witness stated that, in her view the subject property was, and continues to be, appropriate for the use proposed, and that the shape and size of the subject property dictated that dimensional variances would be required.

With regard to the negative criteria, the witness stated that, in her opinion, this was satisfied as well in that there would be no traffic to speak of; the subject property is, and would continue to be, a water tower; and that the proposed height was reasonable. It was the witnesses further view that the proposal was consistent with the Borough Master Plan and with Borough Zoning Ordinances in that the lot size cannot change. She concluded that there would be no substantial negative impacts, that the benefits of granting the relief would outweigh the detriments, and that there would be benefits to the community.

18. In response to questions by members of the Board and the Attorneys for the objectors, Ms. Morrissey stated that she has not reviewed any construction plans for this project, and did not know if the Applicant sought to acquire any adjacent property in order to mitigate its numerous deficiencies. She also was of the opinion that there was no need for the Applicant to look at other sites for the

proposed construction, in that this site had an existing water tower and existing infrastructure. Additionally, the witness stated that she did not know if there were any other similar areas with existing water infrastructure because she "didn't look at it". The witness also conceded that, if approved, this structure would be almost double the height of any other structure in the Borough. Ms. Morrissey stated that she has not worked in this type of environment or setting previously, more specifically, with a water tower of this height; in a 10 acre minimum zone with adjacent large estate lots and multimillion dollar houses; and with the historical significance that this area enjoys. In fact, the witness stated that she based her opinion on the assumed termination of the agreement with the MCMUA, and that her opinion might differ if this was not the situation. It was also suggested to her, and the witness conceded, that the subject property had only 4% of the required lot area for this zone, and that 35 feet is the permitted height.

19. Edward J. DiMond, was recalled and discussed further Revised Plans regarding shifting the tank location approximately 6 feet to the southwest on the site. He discussed the retaining wall and landscaping, and that the asphalt driveway would be modified. The retaining wall will now be 10 feet higher because it is pushed more into the steep slopes. The entire area will be fenced and 15 new trees will be planted on the subject property. The witness also discussed a drone flight over the subject property.
20. Bryan D. Slota was recalled and reviewed the photographic renderings of the proposed tank and conceded that the tank would be visible from "most" locations in the area.
21. Giselle Diaz, an environmental engineer employed by Boswell Engineering, Inc., briefly testified on behalf of the Application and confirmed that appropriate water pressure is mainly determined by the height of the tank. There were other general questions posed by members of the Board and the objecting Attorneys which related to the concepts of tank height and appropriate water pressure.
22. Robert F. Heffernan, a self-employed licensed real estate appraiser and a member of the MAI (Member Appraisal Institute) testified on behalf of the objector, Paul Savas. Mr. Heffernan indicated that he was very familiar with the subject property, the Bernardsville and Mendham areas, and also the proposed project. He indicated that he reviewed the Borough Ordinances and commented that he has had extensive experience with water towers, cell towers, and electric towers and how they affect real estate values.

The witness discussed a project and analysis he conducted in the early 2000s regarding a water tower development in Bernards Township, and the fact that he prepared a "paired data analysis", basically, a value differential in real estate sales prior to, and subsequent to, the construction of the tower. Based upon this analysis he offered his opinion that there was approximately a 17% to 21%

decrease in real estate value to nearby homes subsequent to a water tower being constructed, and that properties at a more distant location face an approximate 8% decrease in fair market value. Mr. Heffernan stated that at this location, with multimillion dollar houses located on 10 acre parcels of property, he foresaw a larger negative impact on fair market value if the water tower was constructed as proposed. With regard to the Savas house in particular, Mr. Heffernan indicated that it probably has a fair market value in the \$6 million range, and that with the construction of the water tower as proposed a reduction in fair market value would be "substantial". The properties located in this area of Bernardsville are historic in nature and would probably experience a significant loss of fair market value if this project was approved.

Mr. Heffernan also referred to section ~ 12-23.11 of the Bernardsville Zoning Ordinances which is entitled "Incongruous Buildings" (copy attached hereto and made a part hereof). This Ordinance states that "No permit shall be granted for a building or use if the design or construction of any building or use is so markedly incongruous with the character of the neighborhood as to materially affect the value of adjacent or nearby property". Based upon this, and based upon his knowledge and experience, Mr. Heffernan concluded that the proposed water tower would clearly be "incongruous" with the character of the neighborhood and would have a materially negative affect on the fair market value of adjacent and nearby properties. In response to questions from the Applicant's attorney and from the Board, Mr. Heffernan stated that tall structures generally have a negative effect on fair market value of neighboring properties, and that a negative difference in valuation continues over time depending on the proximity to the tall structure.

23. At the conclusion of the testimony the three attorneys involved in this Application provided summations.

Niall O'Brien

Mr. O'Brien stressed that the Applicant was a public utility and that it was a permitted conditional use in this zone. He stated that the proposed expansion of the water tower was needed in order to provide appropriate water storage and water pressure to serve the residents of this area, mainly Mendham Borough and Mendham Township, and to provide the appropriate water pressure and volume to address any fire emergencies. He conceded that there would be temporary impacts by the construction of the tower.

Richard Schkolnick

Mr. Schkolnick, representing the objector Karen Martin, requested that the Board deny the Application. Mr. Schkolnick commented that, subsequent to all the testimony provided, neither he nor client have any better understanding of the dynamics between the Applicant and the MCMUA regarding the reasons for

extending or not extending the agreement between them. Information regarding these discussions have been requested by both the Board and the Board Engineering Consultant, and the Applicant has failed to clarify, or provide documentation regarding, these discussions.

Mr. Schkolnick continued and offered his view that the proposal was "wildly out of character" with the area considering the fact that this area was a minimum of 10 acre zone and the Applicant's site was only 0.04 acres in size. The requested height was more than twice the height limit of the zone; there were no alternate sites explored or analyzed; and the subject property is simply too small to have constructed on it a water tower of this size. There would be severe detriments to the area and to the public, with too many unknowns.

David B. Amerikaner

Mr. Amerikaner, representing objector Paul Savas, also urged the Board to deny this Application in that approval would hurt not just the area in which this property is located, but the Borough as well. He also indicated that what is proposed is totally incongruous with the character of the area, and also affirmed statements made by Mr. Schkolnick regarding the excessive height of the proposed structure on a totally inadequately sized lot. Further, property values would be negatively impacted by approximately 20%. Mr. Amerikaner stated that the benefits of this project would be felt mainly in Mendham Borough and Mendham Township and that no alternate sites for a tower of this size were discussed, reviewed, or analyzed.

CONCLUSIONS OF LAW

WHEREAS, pursuant to the Municipal Land Use Law, specifically, N.J.S.A. 40:55D-70d (3), the Board may grant relief from the conditions of any zoning regulation only if the Applicant meets the burden of convincing the Board that the proposed site can appropriately and reasonably continue to function despite the deviations from the conditions. Based upon the testimony and evidence presented the Board finds that the Applicant has not met the requirements for the granting of a conditional use variance, dimensional variances, and preliminary and final site plan approval for reconstruction of this site as proposed.

WHEREAS, in order to grant variance relief N.J.S.A. 40:55D-70 requires that no variance or other relief may be granted without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan, the zoning ordinance and the Master Plan. Based upon the testimony and evidence presented the Board finds that the Applicant has not met this enhanced burden of proof with regard the positive and negative criteria for the reasons set forth hereinafter.

REASONS FOR DENIAL

1. Based upon all testimony and evidence presented during the hearings, together with a review of all Plans, Reports, Memoranda, Photographs, and Exhibits, the Board is convinced that the proposal to renovate and utilize the existing site for a 750,000 gallon water tower is not and cannot be justified for the following reasons;
 - a) From the beginning of this Application to its conclusion, the Applicant has failed to provide appropriate information to the Board as to its dealings with the MCMUA regarding the termination of the existing water supply agreement. The Board has considered this a key aspect of this Application, and remains unclear as to the nuances of water transportation and usage, and what role financial negotiations played in the termination of this agreement. In other words, would a revised monetary agreement between the Applicant and the MCMUA have avoided the need for the Applicant to make this request to the Board, or would a higher fee paid to the MCMUA obviated the need for this proposal at all.
 - b) In the course of the hearings the Applicant commented that there were ongoing negotiations with the MCMUA regarding water supply issues. Despite numerous requests by the Board the results, if any, of these ongoing negotiations were never disclosed or clarified.
 - c) Despite the fact that the conditional use variance standards in Coventry Square are not as strict as a traditional d(1) variance, the fact remains that the Applicant had the burden of persuading the Board that the proposed project could reasonably and appropriately function on this site despite the deviation from the conditions. This the Applicant clearly failed to do. This property lies in a 10 acre minimum zone with estate properties, and the subject property is only 4% of the minimum lot size requirement. Although this property has had a water tank on it for many years, what the Applicant is proposing is a substantial and significantly larger tank holding 3 times the storage space as the current tank. There are significant dimensional deficiencies involved with this project, and there are clearly substantial negative impacts to the neighborhood, zone, and Master Plan of the Borough.
 - d) If approved, the water tower will represent the highest structure within the entire Borough, and this in a minimum 10 acre zone. The height limit in this zone is 35 feet and, with the antenna included, the height of the proposed tower would be 83 feet. As stated by the Applicant's own witnesses, this tower would be clearly visible in this area. Further, and based upon the testimony presented, the top of the proposed water tower would be approximately 100 feet higher than the grade at adjoining Mendham Road.

- e) By virtue of testimony provided during the hearing, it is clear that the Applicant never looked at, analyzed, or modeled any other proposed sites for this tower, even though by their own admission 80% of the benefits of this tower would be located outside of the Borough (to Mendham Township and Mendham Borough) however, 100% of the impacts would be located within the Borough. The Applicant selected this site because it owns it, and because there is an existing, but significantly smaller, tower present. Given the benefits that a new tower would provide, it was incumbent upon the Applicant to specifically locate, review and analyze other sites not strictly in the Borough, but in other areas rather than its current proposal in an exclusive area of the Borough that has significant historical meaning. Despite continued requests, the Applicant clearly indicated that it was not in a position to provide any information to the Board, nor even look at, any other sites for the proposed tower, as is the standard of proof required under Borough Ordinance section 12-25.2.i.7.
- f) Based upon the unrebutted testimony of a prominent real estate appraiser, in the event this structure was built there would be a significant negative impact on fair market value to surrounding properties of possibly up to 20%. Mr. Heffernan is a real estate appraiser that has significant knowledge in this area of Somerset County, and he described a paired sales analysis of a similar project in Bernard's Township which reviewed home sales and value prior to, and subsequent to, the construction of a nearby water tower. The results confirmed a significant reduction in fair market value. Further, Mr. Heffernan's analysis was supported by section 12-23.11 of the Borough Ordinances entitled "Incongruous Buildings". This Ordinance section stated as follows "No permit shall be granted for a building or use if the design or construction of any building or use is so markedly incongruous with the character of the neighborhood as to materially affect the value of adjacent or nearby property". Mr. Heffernan's conclusion was that this Ordinance specifically applied to this Application and to the substantial negative affect this proposal would have on the value of adjacent and nearby property.
- g) As part of the hearings the Board reviewed the November 13th, 2020 Memorandum from the Historic Preservation Advisory Committee (HPAC) which wrote a fairly extensive report regarding this Application and surrounding property. As previously stated, a copy of this Memorandum is attached hereto and incorporated herein. The Memorandum discusses the neighborhood in which the subject property is located and, with regard to these neighboring properties, states, in part, the following "The subject properties are some of the most significant historic properties in Bernardsville with late 19th Century and early 20th Century and owner importance. The houses and buildings are currently eligible to be listed on the New Jersey Register of Historic Places..."

The Report continues as follows regarding the impact of the project on nearby historic properties, "This water tower will be very visible from the road and will loom over the existing former caretaker's cottage and gateway entrance. It will be very visible from the existing Savas and Liu properties". Continuing, "If the Master Plan intent is to protect our historic resources and the unique character of Bernardsville, then some significant effort should be undertaken by the Applicant to modify the height and shape of this enormous tower. Further "...the Applicant should also understand that they have a responsibility to the historic character of the area and their neighbors. And they should also remember that the tower will be very visible and possibly a constant annoyance, not only to the neighbors, but also every person who drives by. Those feelings may not be in the best interest of their company. The Applicant should perhaps seriously consider selling or trading this property for one that would not be so very visible. Finally, the Memorandum concludes with referring to the Municipal Land Use Law specifically, N.J.S.A. 40:55D-2 (j) that one of the purposes of land use is "To promote the conservation of historic sites and districts..."

- h) In general, the Board views what is being proposed for this property as too intense a use for the size of the property, even though it is a permitted conditional use. There is nothing unique about this site to grant the specific relief being requested, which would triple the size of the water tower on this property. The conditional use variance, and dimensional variances being sought, are too many for the proposed use on this site to be deemed supportable given the positive and negative requirements for the granting of the variances. The site is too small and, given the neighborhood zoning, the project is too incongruous with what is being proposed.
- i) The Board views the Applicant's request as probably being predominately driven by reasons of a financial nature. Given the fact that the Applicant failed to provide adequate and clear information to the Board to make a firm decision, along with the Board's understanding that water seems to be available, the Board can only conclude that financial considerations relating to an extension agreement with the MCMUA were involved. This falls far short of justifying such deviations for a conditional use in this zone.

NOW, THEREFORE, BE IT RESOLVED, having reviewed the Application and considered the impact of the proposal on the Borough and its residents, and having determined whether the proposal is in furtherance of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the laws of the Borough, and whether the proposal is conducive to the orderly development of the site and the general area in which it is located, the Board concludes that good cause has not been shown to grant the relief requested by the Applicant.

BE IT FURTHER RESOLVED, by the Zoning Board of Adjustment of the Borough of Bernardsville, in the Country of Somerset and State of New Jersey, on the 6th day of December, upon the appropriate motion made and seconded, that the Application of New Jersey American Water Company, Inc. is hereby denied.

ROLL CALL VOTE

Those in favor: Carton, English, Greenebaum, Kramer, McDowell and Slocum.

Those opposed: None

The foregoing is a true copy of a Resolution adopted by the Board of Adjustment of the Borough of Bernardsville at its meeting of December 6th, 2021.

Date: 12/17/21



Frank Mottola, Administrative Officer