

**BERNARDS TOWNSHIP  
BOARD OF ADJUSTMENT  
MINUTES  
Special Meeting  
June 17, 2010**

The Vice Chair, in the absence of the Chairman, called the regular meeting to order at 7:35 p.m.

**ROLL CALL:**

Members present: Lasko, Miller, Plaza, Ross, Schulenburg, Viola, Rhatican

Members absent: Orr

Members late: none

Board Attorney Steven Warner, Esq., Board Engineer Peter Messina, and Board Planner David Schley were also present.

**OPEN MEETING STATEMENT**

“In accordance with the requirements of the Open Public Meetings Law, notice of this regular meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Bernardsville, NJ, the Courier News, Bridgewater, NJ, and the Star-Ledger, Newark, NJ and was filed with the Township Clerk all on January 11, 2010. We received no requests for individual notice.

“The following procedure has been adopted by the Bernards Township Board of Adjustment. There will be no new cases heard after 10:00 p.m. and no new witnesses or testimony heard after 10:30 p.m.”

**APPROVAL OF RESOLUTIONS**

**RESOLUTION – Feldman, Craig and Elda** – Block 7201, Lot 23 – Extension of Bulk Variance Approval to March 12, 2011

The motion was made by Mr. Miller and seconded by Mr. Ross to approve the resolution as drafted.

Roll call:

Aye: Miller, Ross, Viola, Schulenburg

(Mr. Lasko, Mr. Plaza and Mr. Rhatican were ineligible to vote)

Motion carried

**RESOLUTION – Daly, Mary Catherine** – Block 1614, Lot 7 – Bulk Variance

The motion was made by Mr. Ross and seconded by Mr. Viola to approve the resolution as drafted.

Roll call:

Aye: Miller, Ross, Viola, Schulenburg

(Mr. Lasko, Mr. Plaza, and Mr. Rhatican were ineligible to vote)

Motion carried

**CONTINUED PUBLIC HEARING – Liberty Corner Presbyterian Church – Block 7501, Lot 4 – Use Variance, Amended Preliminary and Final Site Plan Approval for Phase 2, and Bulk Variances**

Vincent Bisogno, Esq. represented the applicant. He noted that they had been before this Board on May 13, 2010. He said that this application asked for three variances: the 42.76 ft height of the new sanctuary; an impervious coverage of 35.7%; and a third sign. He stated that the applicants were withdrawing their request for a third sign. Mr. Warner clarified with Mr. Schley that the applicants' request to not install conservation easement markers was also technically a variance.

Mr. Bisogno said he had no further testimony to present. Mr. Warner clarified possible conditions of approval based on Mr. Messina's May 10, 2010 review memo. Mr. Bisogno said the applicant had discussed and agreed to comply but commented on the following:

- Comment #4 – Mr. Schley clarified that a 50-ft riparian buffer is required by the State. No conservation easement markers are required.
- Comment #6 – Mr. Schley noted that the Lyons Road driveway improvements should be completed prior to the CO being granted. Board members expressed concern that this construction may be delayed.
- Comment #20 – the applicant indicated where the lighting on the columbarium would be located.
- Comment #23 – the applicant has written and verbal agreements with several of its neighbors concerning off-site parking.
- Comment #26 – Mr. Bisogno said that the Church did not plan to demolish the small building on the southeast corner of the lot.
- Comment #27 – Mr. Bisogno said the Church did not intend at this time to merge Lot 10 with Lot 4. Board members noted that variance relief would be required if the Church requested a merger and/or subdivision. Mr. Bisogno said that at this time the Church plans to sell Lot 4.

Board members discussed their concerns about the impact of the Lyons Road driveway on the streetscape as well as traffic issues. They noted that total lot coverage would be reduced if the proposed driveway was eliminated. It was noted that no testimony had been presented by the applicant on that aspect of the site plan.

- Comment #30 – Mr. Schley said the Fire Official may have further comments on the revised plans.
- Mr. Messina noted the applicant had agreed to remove the island in the Lyons Road driveway.

Public hearing was opened for questions and comments on this application.

- Frank Herskowitz, 509 Lyons Road, was sworn in. He noted his concerns about the lighting of the new sanctuary. He said the columbarium would be visible from his lot and recommended that it not be lighted. He thought the height variance for the new sanctuary needed to be considered in light of the

existing grade of the lot. He was concerned that with the construction of the new sanctuary there would be four assembly areas on the Church lot. He would like to see the house on Lot 10 to remain to preserve the existing Lyons Road streetscape.

- Ann Parsekian, Historical Preservation Committee, HSSH, was sworn in. The Committee noted that the existing sanctuary is on the National Register of Historic Places and asked that the Church agree to preserve that building in perpetuity. They had concerns about the size of the columbarium and recommended that it not be lighted. They wanted the house on Lot 10 to be preserved as a part of the Lyons Road streetscape.

Hearing no further questions or comments, the public portion of this hearing on this application was closed.

Mr. Bisogno said the applicant had satisfied the negative criteria in regards to the height of the sanctuary. He said the applicant did not intend to demolish the existing sanctuary. He noted that the variance for lot coverage was a result of miscalculation and that the Planning Board had approved a lot coverage in excess of the permitted amount.

Mr. Warner noted that the public hearing had raised the issue of use of the property for multiple simultaneous assemblies. Mr. Bisogno said that there was currently overlap between church services. It was noted that the Planning Board resolution explicitly prohibited parking on Lyons Road. Mr. Schley clarified that the old sanctuary was not in the B-4 Historic Liberty Corner Business zone and that any changes to that building would not necessarily require Board approval.

Public hearing was re-opened for comments; seeing no one, the public portion of this hearing on this testimony was closed.

Board members discussed the impact of the size and lighting of the columbarium on the neighborhood, and the requested lot coverage variance. Board members said that they were uncomfortable voting on the proposed site plan because they had not heard testimony on the impact of the size of the new sanctuary and the need for the proposed Lyons Road driveway.

Mr. Bisogno asked that the Board vote separately on the two variances requested. Board members indicated that they were not comfortable with taking such action without knowing if they had the right to require testimony in regards to the site plan. Mr. Warner and Mr. Bisogno agreed to research the extent to which the Board has jurisdiction to review the site plan aspects of the proposal that were approved in 2000 by the Planning Board. Mr. Bisogno agreed to submit a memo to Mr. Warner in sufficient time for Mr. Warner to send his comments to the Board on this issue.

Mr. Schulenburg announced that the next hearing on this application would be on August 4, 2010, no further notice required.

The Board moved to adjourn the public meeting at 9:43 p.m., there being no further business to discuss.

Respectfully submitted,

Frances Florio  
Secretary to the Board

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**CRAIG AND ELDA FELDMAN  
Case No. ZB08-035A**

**RESOLUTION – EXTENSION**

WHEREAS, CRAIG AND ELDA FELDMAN (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for an extension of the variance approval heretofore granted to them, pursuant to a Resolution adopted by the Board on March 12, 2009 in Case No. ZB08-035, the aforesaid approval pertaining to the construction of a one-story, 265 square foot addition and a 168 square foot deck to the rear of an existing single-family dwelling, on property identified as Block 7201, Lot 23 on the Tax Map, more commonly known as 32 Old Coach Road; and

WHEREAS, pursuant to Section 21-5.10 of the Land Development Ordinance (the “Ordinance”), variances granted by the Board shall expire by limitation unless construction or alteration shall have actually have been commenced within one (1) year from the date of the Board’s decision; and

WHEREAS, the Applicants requested, in accordance with Section 21-5.10 of the Ordinance, that the Board grant them an extension of one (1) year from the date of the expiration of the aforementioned approval; and

WHEREAS, the Board, by a vote of 4 to 0, finds that the Applicants have demonstrated to the reasonable satisfaction of the Board that the Applicants were barred or prevented, directly or indirectly, from proceeding with the project because of delays beyond the control of the Applicants, specifically delays due to economic circumstances. The Board Attorney advised the Board that Section 21-5.10 of the Ordinance provides

that an applicant may apply for an extension of a variance approval either before or after what would otherwise be the expiration date of the approval and that, if the variance approval has expired before the date on which the extension is granted, then the extension shall begin on what would otherwise have been the expiration date. The Board noted that there were no zoning changes in the interim which would affect the project or require any further variance relief.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bernards, on this 9th day of June, 2010, that the application of Craig and Elda Feldman for an extension of the variance approval heretofore granted to them, as aforesaid, be, and the same is hereby, granted until March 12, 2011, such extension to be subject to all of the same conditions as are set forth in the Board's original Resolution of approval dated March 12, 2009 in Case No. ZB08-035.

ROLL CALL VOTE:

Those in Favor: Miller, Ross, Viola, Schulenburg

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of June 17, 2010 as copied from the Minutes of said meeting.

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FRANCES FLORIO, Secretary  
ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF BERNARDS,  
COUNTY OF SOMERSET,  
STATE OF NEW JERSEY

Dated: \_\_\_\_\_, 2010

ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS

MARY CATHERINE DALY  
Case No. ZB10-010

RESOLUTION

WHEREAS, MARY CATHERINE DALY (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following variance to construct a 300 sq. ft screened porch, which would enclose part of an existing deck, on the rear of the existing single-family dwelling on property identified as Block 1614, Lot 7 on the Tax Map, more commonly known as 6 Tanglewood Lane:

A variance for a rear-yard setback of approximately 57 feet, whereas the existing rear-yard setback is approximately 73 feet, and the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on June 9, 2010, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions;

1. The Board reviewed the application and deemed it complete.
2. The subject property is a conforming 1 acre corner lot with frontage on Tanglewood Lane and Manchester Drive. There presently exists on the property a two-

story single-family dwelling, with an existing rear deck and associated driveway and walkways.

3. The Applicant proposes to construct a 16 foot by 18.75 foot (300 square foot) screen porch, which would enclose part of the existing deck.

4. The Applicant's proposal is depicted on a one-page architectural drawing/variance plan prepared by Heyrich Architects, dated April 20, 2010. The Applicant also submitted a copy of a Survey prepared by William Held Associates, L.S., dated May 24, 1993.

5. The property is in an R-4 (1 acre) residential zone. The requested variance for the rear-yard setback falls within the criteria of N.J.S.A. 40:55D-70(c).

6. By Memorandum dated May 17, 2010, the Township Environmental Commission noted that it had no concerns with this application at the time.

7. The Board's Planner, David Schley, A.I.C.P./P.P., was duly sworn according to law.

8. Mary Catherine Daly, 6 Tanglewood Lane, the Applicant, was duly sworn according to law. She testified generally regarding the proposal to screen a portion of the existing rear deck. Ms. Daly further testified that she spoke with several of her neighbors, including the Gannys immediately to the rear of her property at Block 1614, Lot 6, the property owners who would be most effected by the proposal, and they did not object to same. She further testified that she took the photographs that were submitted with the application materials in April 2010 shortly before submitting the application and that the photographs accurately depict the present conditions at the property.

9. The Applicant stipulated, as a condition of approval, to maintaining the unscreened portion of the deck as an open deck, as proposed.

10. No member of the public commented on, or objected to, the proposal.

11. After reviewing the evidence submitted, the Board, by a vote of 4 to 0, finds that the Applicant has satisfied her burden of proving an entitlement to the requested variance relief under N.J.S.A. 40:55D-70(c)(2).

12. With respect to the positive criteria for a “c(2)” or “flexible c” variance, the Board finds that the Applicant has satisfied her burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviation from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriment associated therewith. The Board finds that the proposed development will provide a desirable visual environment and otherwise will promote the general welfare. The Board further finds that the proposal will result in nominal, if any, detriments. The proposed development will be to the rear of the home and not visible from the street. Moreover, the development will cover just a portion of the existing rear deck.

13. The Board recognizes that the Applicant’s lot is a corner lot with frontage on Tanglewood Lane and Manchester Drive. Since the dwelling faces Tanglewood Lane, which is the wider frontage, the Applicant’s building envelope is wider than it is deep, leaving room to expand to the sides of the dwelling but not to the rear. The existing/proposed deck is permitted to encroach into the 75 foot rear-yard setback area because it is, and will remain, an open deck not exceeding 600 square feet in area.

14. Finally, the Board finds that the Applicant has satisfied the negative criteria. The Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board took action on this application at its meeting on June 9, 2010, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 9<sup>th</sup> day of June, 2010, that the application of Mary Catherine Daly, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall maintain the unscreened portion of the rear deck as an open deck, as proposed;
- (3) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (4) The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- (5) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Miller, Ross, Viola, Schulenburg

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on June 17, 2010 as copied from the Minutes of said meeting.

ADJUSTMENT

FRANCES FLORIO, Secretary  
ZONING BOARD OF

OF THE TOWNSHIP OF  
BERNARDS, COUNTY OF  
SOMERSET,  
STATE OF NEW JERSEY

Dated: \_\_\_\_\_, 2010