

**BERNARDS TOWNSHIP PLANNING BOARD**

**ISLAMIC SOCIETY OF BASKING RIDGE, INC.**

**BLOCK 9301, LOT 2  
124 CHURCH STREET**

**APPLICATION #PB12-001**

**RESOLUTION REGARDING BOARD'S WILLINGNESS TO RELAX THE 20-DAY  
TIME PERIOD TO ALLOW THE APPLICANT TO MOVE FOR A REHEARING**

**WHEREAS**, the Islamic Society of Basking Ridge, Inc. (the "**applicant**" or "**ISBR**") owns certain property in the Township of Bernards (the "**Township**") located at 124 Church Street and designated on the Township tax maps as Block 9301, Lot 2 (the "**property**"), which property is 4.088 acres in size, is situated in the R-2 residential zoning district (the "**R-2 zone**") and contains an existing permitted single family dwelling (the "**existing dwelling**"), accessory building (the "**accessory building**") and paved circular driveway (the "**existing driveway**"), with the dwelling connected to and served by the public water and sanitary sewer systems;

**WHEREAS**, ISBR submitted an application to the Bernards Township Planning Board (the "**Board**") in 2012 seeking preliminary and final site plan approval with certain "c" variances and exceptions (the "**application**") to allow: (1) demolition of the existing dwelling, (2) construction of a one-story, 4,252 square foot Mosque containing a prayer hall and multi-purpose room having a combined stated capacity for 150 people, as well as other smaller rooms, (3) one-way entrance and exit drives to provide ingress from and egress to Church Street, (4) a paved parking lot consisting of 50 parking spaces (5) two bio-retention basins, one in the front yard and one in the easterly side yard (and within the easterly buffer), (6) other related site improvements, and (7) retention of the 750 square foot accessory building for use accessory to the proposed Mosque, all as reflected on the applicant's initial plans and drawings submission consisting of a "Preliminary and Final Site Plan" revised through May 18, 2012 (consisting of 11 sheets), "Topographic & Boundary Survey revised through March 4, 2012 (consisting of 1 sheet), and architectural drawings revised through July 6, 2012 (consisting of 3 drawings) (the "**initial site plans and architectural drawings**");

**WHEREAS**, the application was revised a few times during the course of the hearing on the application by submission of supplemental and/or replacement plans and drawings, and the last set of plans and drawings (which are referenced below) reflect that the applicant seeks preliminary and final site plan approval and exceptions to allow: (1) demolition of the existing dwelling, (2) construction of a one-story, 4,216 square foot Mosque (the "**proposed Mosque**") containing a prayer hall (the "**prayer hall**") and multi-purpose room (the "**multi-purpose room**") having a combined stated capacity for 150 people, as well as other smaller rooms, (3) a 20 foot wide westerly one-way entrance drive providing ingress to the property from Church Street, (4) a 24 foot wide easterly one-way exit drive providing egress from the property to Church Street, (5) a 107 space parking lot consisting of 69 paved spaces and 38 spaces to be "banked" for future construction (the "**proposed parking lot**"), (6) two detention basins, one in

the front yard and one in the easterly side yard (and within the easterly buffer) (the “**detention basins**”), (7) other related site improvements including but not limited to landscaping and fencing, and (8) retention of the 750 square foot accessory building for storage use (all of the proposed improvements together being referred to as the “**proposed development**”);

**WHEREAS**, the proposed Mosque is a “house of worship” pursuant to ordinance section 21-3.1, houses of worship were principally permitted uses in the R-2 zone at the time the application was submitted to the Board in 2012 accordance with Township zoning ordinance section 21-10.4.a.1.(c), and the Time of Application Law, specifically, N.J.S.A. 40:55D-10.5, provides that those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application, so the proposed Mosque was deemed to be a principally permitted use on the property and, as such, the Board had exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-20, 46, 50, and 51, by reason of the application not requiring any “d” type variances to construct the proposed development pursuant to N.J.S.A. 40:55D-70d;

**WHEREAS**, the Board denied the application on December 8, 2015 as memorialized in a resolution adopted on January 19, 2016, with the resolution’s findings and conclusions explaining the bases for the denial, with the reasons for the denial of preliminary site plan approval being summarized for purposes of the within resolution as follows: (1) the Board could not “specifically approve” the proposed 7,500 square foot detention basin wholly within the 50-foot wide buffer as required by the ordinance because allowing such a large drainage improvement wholly within the buffer represents the exception swallowing the rule and defeats the very purpose of the buffer; (2) the applicant failed to prove compliance with all of the landscaping requirements and fencing regulations established in the ordinance; (3) the applicant failed to design internal traffic circulation to minimize the use of aisles serving parking areas and the internal circulation system will not be able to handle access and circulation of fire trucks due to the parking lot aisle widths adjacent to the 90 degree parking stalls on the easterly side and westerly side of the site as well as to the rear of the building being 24 feet wide when the ordinance requires them to be 26 feet wide, and the parking lot aisle adjacent to the westerly side of the building leading to the parking lot to the rear of the building being as narrow as 20 feet when the ordinance requires parking lot aisles adjacent to any building to provide a travel lane with minimum 24 feet clear width; and (4) ordinance compliant Stormwater drainage plans were not submitted to the Board for approval;

**WHEREAS**, the Board notes that the vote on the motion regarding preliminary site plan approval was two (2) Board members in favor (members Pavlini and Santoro) but subject to the imposition of conditions which were placed on the record during the Board deliberations, which conditions would have required changes to the site plans to address the reasons for the denial as summarized above, and four (4) members against (members Alper, Klienbert, Piedici and Plaza) but, of the four (4) members who voted against granting preliminary site plan approval, two (2) members (Alper and Piedici) stated during the Board deliberations that they would vote to grant preliminary site plan approval if the changes required by the proposed approval conditions were made and a re-submission of the site plans to the Board was made;

**WHEREAS**, Board Rule 3:2-1 provides a mechanism for a “rehearing” of an application as follows:

**3:2-1. Rehearing.** An applicant or other interested party may, within 20 days after the publication of notice of the decision, move the Board for a rehearing of the matter or a portion thereof by filing an application in the form of a letter addressed to the Board containing a brief statement of the grounds relied upon. If the Board grants the motion, it shall fix a date for rehearing and shall require the moving party to give notice to all persons who participated in the original hearing or hearings, upon such terms as the Board may deem adequate. The Board may grant a rehearing on its own motion when unusual circumstances so require in the interest of justice.

**WHEREAS**, the Board as a whole concludes that only those members who voted on the underlying application can vote on whether or not to grant a rehearing (see, Drill and Novak, “Considering Reconsideration,” 22 Municipal Law Review 2 (June 1999), page 9, n 3);

**WHEREAS**, pursuant to Board Rule 5:5-1 (relaxation of a rule where good cause is shown, or where the strict application of any rule would cause injustice), the five (5) remaining members of the Board who voted on the underlying application are willing to relax the 20-day limitation period to allow the applicant to move for a rehearing in the event that the applicant moves for a rehearing within 90 days of the date hereof and, as part of the motion for rehearing, proposes to change the site plans to address the reasons for the denial as summarized above;

**WHEREAS**, the five (5) remaining members of the Board who voted on the underlying application wish to make it clear that in the event the applicant moves for rehearing and the Board grants a rehearing, the Board will treat the proposed Mosque as a principally permitted “house of worship” in the R-2 zone because, at the time the underlying application was submitted to the Board in 2012, a “house of worship” was a principally permitted use in the R-2 zone in accordance with Township zoning ordinance section 21-10.4.a.1.(c), and the Time of Application Law (N.J.S.A. 40:55D-10.5) provides that those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application, so the Board would continue to have exclusive subject matter jurisdiction over the rehearing of the application by virtue of N.J.S.A. 40:55D-20, 46, 50, and 51, by reason of the application not requiring any “d” type variances to construct the proposed development pursuant to N.J.S.A. 40:55D-70d;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS A WHOLE, BY MOTION DULY MADE AND SECONDED ON APRIL 19, 2016, AS FOLLOWS:**

1. Only those members who voted on the underlying application can vote on whether or not to grant a rehearing of the application.

**NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE BOARD BY THE FIVE (5) REMAINING MEMBERS OF THE BOARD WHO VOTED ON THE**

**UNDERLYING APPLICATION, BY MOTION DULY MADE AND SECONDED ON APRIL 19, 2016, AS FOLLOWS:**

2. The 20-day time limitation for moving for rehearing of the application will be relaxed in the event the applicant moves for a rehearing within 90 days of the date hereof and, as part of the motion for rehearing, proposes to change the site plans to address the reasons for denial as summarized above.

3. The Board Secretary is directed to forward a copy of the within resolution to the applicant.

4. Howard B. Mankoff, Esq., who represents the Board in the litigation that the ISBR has filed in federal court against the Board, is directed to forward a copy of the within resolution to Michael Buchanan, Esq. and Adeel Mangi, Esq., the attorneys representing the ISBR in the litigation.

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**VOTE ON FIRST MOTION DULY MADE AND SECONDED ON APRIL 19, 2016 BY THE BOARD AS A WHOLE:**

**THOSE IN FAVOR: ALPER, AXT, BALDASSARE, HARRIS, KLEINERT, MALAY, PIEDICI, PLAZA & SANTORO.**

**THOSE OPPOSED: NONE.**

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**VOTE ON SECOND MOTION DULY MADE AND SECONDED ON APRIL 19, 2016 BY THE FIVE (5) REMAINING BOARD MEMBERS WHO VOTED ON THE UNDERLYING APPLICATION:**

**THOSE IN FAVOR: ALPER, KLEINERT, PIEDICI, SANTORO & PLAZA.**

**THOSE OPPOSED: NONE.**

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I, Frances Florio, Secretary to the Planning Board of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the resolution duly adopted by the said Planning Board on April 19, 2016.

Frances Florio  
**FRANCES FLORIO, Board Secretary**