

TOWNSHIP OF BERNARDS
ZONING BOARD OF ADJUSTMENT

SPECIAL MEETING AGENDA - Revised

Warren Craft Meeting Room

September 16, 2021

7:30 PM

This meeting will be held in person in the Warren Craft Meeting Room. In addition, the public will be able to view the meeting live on Optimum/Cablevision TV – Channel 15 and Verizon FIOS TV – Channel 35. For those interested in watching on their computers, the link will be available at 7:30 PM by clicking on the “Watch the Meeting Live” icon on the Bernards Township Zoning Board of Adjustment web page. Please note that all questions/comments must be made in person.

- 1. CALL TO ORDER**
- 2. FLAG SALUTE**
- 3. OPEN PUBLIC MEETING STATEMENT**
- 4. ROLL CALL**
- 5. APPOINTMENT OF LANDSCAPE COMMITTEE**
 - A.** A. Sposato Realty Co., Inc./Sposato Realty LP; East Craig Street; ZB20-016
- 6. PUBLIC HEARING** (continued from 06/17/2021)
 - A.** [Baston 95, LLC](#); Block 704, Lot 1.01; 95 Morristown Road; Preliminary/Final Site Plan, Use Variance, Bulk Variances; ZB21-015
- 7. COMMENTS FROM MEMBERS**
- 8. COMMENTS FROM STAFF**
- 9. ADJOURN**

09/14/2021dssw

TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance | <input type="checkbox"/> Appeal of Zoning Officer's Decision |
| <input checked="" type="checkbox"/> Use ("d") Variance | <input type="checkbox"/> Interpretation of Zoning Ordinance |
| <input type="checkbox"/> Conditional Use ("d") Variance | <input type="checkbox"/> Minor Subdivision |
| <input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance | <input type="checkbox"/> Major Subdivision - Preliminary / Final |
| <input checked="" type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Other (specify): _____ |

1. APPLICANT: Baston 95, LLC

Address: c/o Afrim Berisha, 20 Gold Boulevard, Basking Ridge, NJ 07920

Phone: (home) N/A (work) N/A (mobile) 908-400-3481

Email (will be used for official notifications): afrimbistro73@gmail.com

2. OWNER (if different from applicant): Same

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: Bisogno, Loeffler & Zelle

Address: 88 South Finley Avenue, P.O. Box 408, Basking Ridge, NJ 07920

Phone: 908-766-6666 Email (will be used for official notifications): vbisogno@baskingridgelaw.com

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: See attached Contact Sheet Profession: _____

Address: _____

Phone: _____ Email (will be used for official notifications): _____

5. PROPERTY INFORMATION: Block(s): 704 Lot(s): 1.01 Zone: R-6

Street Address: 95 Morristown Road Total Area (square feet/acres): 98,725 s.f.; 2.27 acres

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? No Yes (if yes, explain or attach Board resolution) See attached 4 Resolutions (Docket No. 81-14; 93-14; ZB05-016 and ZB16-032.

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? No Yes (if yes, explain) Property is a non-conforming use and inherently has zoning violations. See attached Addendum explaining application.

As noted above, lot coverage will remain the same as previously approved in Resolution #3 below.

The justification for the variances are as follows:

Positive Criteria

A. **Use Variance or Expansion of a Non-Conforming Use:** Proofs required in establishing the justification for a use variance or an expansion of a non-conforming use are somewhat similar in nature. This lot has been used a restaurant since the 1930s. It has been temporarily closed because of the COVID-19 pandemic which has decimated the restaurant industry. It was not a voluntary closure and there was no intent to voluntarily abandon the use.

A use variance is justified in our case because the general welfare is served because the use as a restaurant is peculiarly fitted to the particular location. Also, the building proposed by the applicant will create a desirable visual environment, with enhanced safety features of a new HVAC system, more space between tables handicap accessibility which is not present in the existing restaurant. Particular suitability is also demonstrated by the fact that the use is on a U.S. highway and adjacent to office complexes. There is also a substantial landscaping being proposed.

B. **Parking Variance:** The Bernards Township Zoning Ordinance requires 151 parking spaces based upon the square footage of the restaurant. Applicant has 83 spaces which has existed for many years without issue. This parking variance was approved previously. Applicant's traffic engineer will testify that the 83 spaces can adequately accommodate the modest increase in square footage of the restaurant.

C. **Accessory Building Location:** The Bernards Township Zoning Ordinance requires a 10' separation between accessory buildings and Applicant has 2.3'. This condition has existed for many years and will be addressed by the Applicant's planner.

D. **50' Buffer to Residential Zone:** Currently there is a dumpster in the buffer area. This dumpster will be removed. The variance was previously approved by this Board. Additional landscaping is being proposed in this area to mitigate against any impact on the residential zone.

Negative Criteria

There is no substantial detriment to the public good nor is there any substantial detriment to the Zone Plan and the Zoning Ordinance of Bernards Township (emphasis added). The critical word here is "substantial" and involves a balancing of the benefits of the variance against the detriments. As was pointed out, the building has been at this location for over 90 years and is located on a U.S. highway adjacent to office complexes. In fact, what is being proposed by the applicant will be a benefit to the surrounding area. The general welfare is served for the following reasons:

- A. It replaces a deteriorating structure with a new modern structure.
- B. Improved aesthetics of the building.
- C. A new landscaping plan is proposed which improves the aesthetics of the building and provides privacy for surrounding residents.
- D. It creates a safer dining experience by providing more space between tables.
- E. A new HVAC system is proposed which also enhances safety.
- F. It provides handicap accessibility which does not exist today.

There is no negative aspects to this construction since the building exists and has been here for 90 years.

In regard to the use variance and the enhanced burden of proof set forth in Medici v. BPRC, 107 N.J. (1) 1987, the Township Committee did not rezone the property for a restaurant because it would be a one lot zone. The adjacent residential zones and the E zones does not allow for restaurants. The Township is aware that the matter has been before the Board of Adjustment on several occasions and the Board has appropriately handled the case on all occasions.