

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v3
Special Meeting
October 13, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:33 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairwoman Genirs read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Zoning 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, NJ, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk, all on January 6, 2022 and was electronically mailed to all those people who have requested individual notice.

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

ROLL CALL:

Members Present: Amin, Baumann, Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: NONE
Also Present: Board Attorney, Christopher Sobieski, Esq.; Township/Board Planner, David Schley, PP, AICP; Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

APPROVAL OF RESOLUTIONS

[Dietrich, Jennifer](#); Block 1616, Lot 8; 33 Manchester Drive; ZB22-007 (approved) - Ms. Baumann moved to approve the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Baumann, Genirs, Cambria, Kraus, Pochtar, Tancredi
Nay: NONE
Ineligible: Amin, Helverson, Pavlosky

Motion carried.

COMPLETENESS HEARING

[Priscilla's Pantry LLC](#); Block 801, Lot 4.01; 199 Morristown Road; Amended Preliminary/Final Site Plan, Variances; ZB22-027

Present: Frederick B. Zelle, Esq., Attorney for the Applicant

Frederick B. Zelle, Esq., attorney with a business address of 53 Division Avenue, Millington, NJ, entered his appearance on behalf of the Applicant and referred to Mr. Schley's Completeness Review memo (10/11/2022) which listed four (4) items that had not been submitted. He stated that the Applicant is requesting a checklist waiver for Item 2 (proposed stormwater management measures) and that the remaining items would be submitted shortly.

Mr. Tancredi moved to grant the waiver request for Item 2 and to deem the application *incomplete* pending receipt of the other outstanding items. Mr. Cambria seconded.

Roll call: Aye: Baumann, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Nay: NONE
Ineligible: Amin, Helverson

Motion carried.

COMPLETENESS AND PUBLIC HEARING

[Zhang, Z./Zhao, H.](#); Block 6207, Lot 5; 125 Highland Avenue; Bulk Variances; ZB22-023

Present: Zhigang Zhang & Huijie Zhao, Applicants

Mr. Sobieski stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Ms. Zhao, Mr. Zhang, Mr. Quinn and Mr. Schley were duly sworn.

Zhigang Zhang, Applicant residing at 125 Highland Avenue, testified that he was seeking approval for the following existing, unapproved conditions: (1) A recreational vehicle (RV) parked in a driveway in the westerly (Keats Road) front yard, (2) A shed (larger of the two sheds) partially located in the westerly (Keats Road) front yard, (3) A trellis attached to the dwelling, and (4) A freestanding/detached trellis in the rear yard next to the larger shed.

Mr. Zhang stated that his property is a corner lot with two (2) front yards, Highland Avenue (primary) and Keats Road (secondary). He testified that although the RV and larger shed are located in what functions as his side yard, they are actually in a front yard (Keats Road) which is not permitted by ordinance. He added that he had obtained a construction permit for that shed based on a plan that showed it to be in the rear yard. A certificate of occupancy was issued without the benefit of an as-built survey and the issue was discovered when a new survey was obtained in 2022. The trellis attached to the dwelling is considered part of the principal structure and does not comply with the minimum side yard setback requirements. Finally, he stated that the freestanding/detached trellis is less than 10 feet from the larger shed which does not meet the minimum distance required between two structures.

Mr. Zhang confirmed that he had taken the pictures submitted with the application in the summer of 2022 and that they accurately depict the property as it currently exists. In addition, he testified that he had spoken to his neighbors and that no one voiced any concerns about the location of the RV.

The following 8.5" X 11" color photos, taken by Mr. Zhang, were entered into evidence:

- **Exhibit A-1** – a photo showing that a portion of the patio under the trellis attached to the existing dwelling had been removed
- **Exhibit A-2** – a photo showing the newly planted fruit trees and green giant arborvitae
- **Exhibit A-3** – a photo of Ms. Zhao standing next to an arborvitae to show the size of the plantings

Using the exhibits, Mr. Zhang testified that he had planted the trees to buffer the view of the RV from both Keats Road and Highland Avenue. Several members felt that the RV was still not adequately buffered visually and suggested a landscape committee be created to visit the property to identify locations for additional plantings.

The hearing was then opened to the public for questions of the witness. Paresh Dalal (138 Highland Avenue) and Austin W. Colotti (4 Keats Road) posed questions including the usage of the RV and large shed. Hearing no further questions, that portion of the hearing was closed.

Mr. Zhang testified that the large shed, which requires relief for its location, is a two-story structure used strictly by his family. He added that there are no kitchen facilities or plumbing in the shed and that it has never been used as a rental. The RV, however, is listed on a "RV share" website so that when he is not using it, it is available for others to pick up and use. Mr. Schley advised that that constitutes a business which would require an additional variance. Mr. Zhang stipulated, as a condition of approval, to discontinuing that usage and to complying with the applicable ordinances.

Mr. Zhang testified that one of the cars parked in his driveway was unregistered and uninsured. He agreed to comply with the ordinance requiring that such vehicles to be garaged.

The comments in the memos from Mr. Schley (10/06/2022), Mr. Quinn (10/12/2022) and the Environmental Commission (09/28/2022) were addressed to the satisfaction of the Board.

The hearing was then opened to the public for questions or comments. Austin W. Colotti (4 Keats Road) opposed approval of the application. Hearing nothing further, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria for both "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variance relief. Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to

grant the relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Cambria seconded.

Roll call:	Aye:	Baumann, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin, Helverson

Motion carried.

COMPLETENESS & PUBLIC HEARING

Campbell, Bryan & Jessica; Block 1806, Lot 9; 34 Spencer Road; Bulk Variances; ZB22-024

Present:	Frederick B. Zelley, Esq., Attorney for the Applicants
	David J. Egarian, PE, Engineer for the Applicants
	Bryan Campbell, Applicant

Mr. Sobieski stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Egarian, Mr. Campbell, Mr. Quinn and Mr. Schley were duly sworn.

Frederick B. Zelley, Esq., attorney with a business address of 53 Division Avenue, Millington, NJ, entered his appearance on behalf of the Applicants and stated that the proposal, construction of an inground pool, a deck (replacing an existing patio), a firepit and walkways, requires relief for exceeding the maximum allowable lot coverage. He noted that the Applicants had opted to remove the pergola over the deck as shown in the color rendering submitted with the application, so that the deck would be considered "open" and therefore not count as impervious coverage. In addition, the Applicants seek relief for an existing shed which encroaches into the side yard setback. Mr. Zelley confirmed that he had taken the pictures submitted with the application in August of 2022 and that they accurately depict the property as it currently exists.

Bryan Campbell, Applicant residing at 34 Spencer Road, described the proposed project, testifying that no trees would be removed and that there would be no additional lighting other than downward facing landscape lights. He stated that the only concern from his neighbors was about the removal of shrubs required for the pool fencing installation.

David J. Egarian, PE, professional engineer with the firm of *DJ Engineering Associates Inc.*, Fairfield, NJ, was accepted by the Board as an expert in the field of engineering and confirmed that he had created the design for the proposed improvements including the stormwater management system. He gave a brief description of the topography of the property and opined that there be would little, if any, impact on the existing drainage.

The hearing was then opened to the public for questions. Todd Edelstein (172 Riverside Drive) questioned the coverage issue and Beata Cunningham (38 Spencer Road) stated that she has no problem with the shed location even though she is the neighbor most affected. Hearing no further questions, that portion of the hearing was closed.

After a discussion with the Board about options for reducing the excess coverage, the Applicant stipulated to a total maximum impervious coverage of 25.3%, allowing him the flexibility to choose the areas to remove.

The comments in the memos from Mr. Schley (10/06/2022), Mr. Quinn (10/12/2022) and the Environmental Commission (09/28/2022) were addressed to the satisfaction of the Board.

The hearing was then opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria for "c(2)" or "benefits outweigh detriments" variance relief. Mr. Cambria moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

Roll call: Aye: Baumann, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
Nay: Genirs
Ineligible: Amin, Helverson
Motion carried.

COMPLETENESS AND PUBLIC HEARING

Silva, Erik C. & Catia R.; Block 8401, Lot 11; 48 Crest Drive; Bulk Variance; ZB22-025
Present: Erik C. Silva, Applicant

Mr. Sobieski stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Silva, Mr. Quinn and Mr. Schley were duly sworn.

Erik C. Silva, Applicant residing at 48 Crest Drive, stated that the proposed project, installation of an 8-foot-high deer fence enclosing the rear yard and portions of each side yard, requires relief for the height of the fence (6' maximum allowed in the side and rear yards). He testified that the 8-foot height of the fence (post and wire) is necessary to keep unwanted animals out of the back yard and that no trees would be removed during installation. **Exhibit A-1**, an 8.5" x 11" color photo of the type of gate that will be installed to allow access to an existing utility easement which traverses the rear yard of the subject property, was entered into evidence. Mr. Silva testified that he had taken the pictures submitted with the application in August of 2022 and that they accurately depict the property as it currently exists. Finally, he stated that there had been no negative comments from his neighbors.

Mr. Silva stipulated to moving the portion of fence facing Crest Drive on the north side of the house from the front corner of the house to the rear corner.

The comments in the memos from Mr. Schley (10/06/2022), Mr. Quinn (10/12/2022) and the Environmental Commission (09/28/2022) were addressed to the satisfaction of the Board.

The hearing was then opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria for "c(2)" or "benefits outweigh detriments" variance relief. Ms. Pochtar moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Baumann seconded.

Roll call: Aye: Baumann, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi,
Nay: NONE
Ineligible: Amin, Helverson
Motion carried.

COMMENTS FROM MEMBERS OR STAFF

The Board held a short discussion on the number of applications requesting relief for maximum allowable impervious coverage. Chairwoman Genirs suggested the possibility of addressing the issue in the Annual Report.

ADJOURN

Moved by Mr. Kraus, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 10:25 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as revised 11/09/2022

10/20/2022 dscs

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**JENNIFER DIETRICH
Case No. ZB22-007**

RESOLUTION

WHEREAS, **JENNIFER DIETRICH** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking the following variance relief in connection with the proposed conversion of a 14 ft. by 23 ft. (322 sq. ft.) portion of an existing two-car garage into a “home office” for personal training, at the existing dwelling located on property designated as Block 1616, Lot 8 on the Official Tax Map of the Township of Bernards, more commonly known as 33 Manchester Drive (the “Property”):

1. A d(3) conditional use variance for the proposed use as a “home office” for personal training where the proposal would not comply with the condition that there be no parking permitted in the front yard, pursuant to Section 21-12.3.b.2 of the Land Development Ordinance (the “Ordinance”);
2. A d(3) conditional use variance for the proposed use as a “home office” for personal training, where the proposal would not comply with the condition that there be at least one parking space for each 200 sq. ft. or fraction thereof of gross floor area (here 2 parking spaces for 322 sq. ft.), unless the Applicant can demonstrate that fewer will be required, and the Applicant proposes no home office parking spaces onsite as all 3 existing parking spaces are required per residential parking, in violation of Section 21-12.3.b.2 of the Ordinance;
3. A bulk variance for 3 residential parking spaces located in a front yard, whereas the maximum number of such parking spaces permitted in a front yard is 1 parking space, pursuant to Section 21-22.1.b.2(a) of the Ordinance; and
4. A bulk variance for an accessory (shed) side-yard setback of 11.5 feet, whereas the maximum required accessory side-yard setback is 15 feet in a R-4 Residential zone, pursuant to Section 21-16.1.c and Table 507 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on September 7, 2022, 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 to be complete.
2. The Applicant, a certified personal trainer under the American College of Sports Medicine (ACSM), proposes to provide personal training in a converted portion of the existing home's garage.
3. The Property is a slightly undersized (lot area and lot width), corner lot located at the intersection of Manchester Drive and Brandeis Ct. in an R-4 (1 acre) residential zone. The use is a conditional use. The requested variance for the proposed "home office" use is necessary since the use violates conditions imposed by the Ordinance, and the relief is governed by the criteria of N.J.S.A. 40:55D-70(d)(3).
4. A "home office" is defined in §21-3.1 as "the office of a physician, surgeon, dentist, attorney at law, architect, artist, real estate broker, scientist, mathematician, engineer, planner or person of like profession, which office is located within the residence of the person who practices such profession." The Applicant requested that the Board consider a Certified Personal Trainer to be a "person of like profession" similar to the professions specifically identified within the above definition, so that the proposed use may be classified as a conditional use. The proposal requires a "d(3)" conditional use variance to permit a deviation from a conditional use standard, as outlined below.

5. In the last 25 years, the Planning Board and the Board of Adjustment have heard a total of 13 applications seeking conditional use or conditional use variance approval for a home office. The types of professions that were found to be “home office” are as follows:

Planning Board

Investment manager
Piano instructor
Chiropractor
Medical doctor
Financial planner
Architect
Herbal medicine / massage therapist

Board of Adjustment

Graphic designer
Psychologist
Dentist
Hyperbaric oxygen therapy practitioner
Mental health therapist (2)

6. A home office is a conditional use in the R-4 residential zone, subject to the conditional use standards set forth in Section 21-12.3.b of the Ordinance, which are as follows:

- A. §21-12.3.b.1 Such office shall be contained entirely within the residential structure on the premises and shall not exceed 25% of the total floor area of that structure except that in no case shall such office exceed 900 square feet exclusive of parking spaces.

- After the proposed conversion of the existing two-car garage to livable space, the total floor area of the Applicant's dwelling will be 4,969 sq. ft. The Applicant proposes to use 322 sq. ft. (6.5%) of floor area for her home office. This condition is satisfied.

- B. §21-12.3.b.2 Adequate parking spaces shall be provided so that no parking related to the office shall occur on the street. At least one parking space shall be provided for each 200 square feet or fraction thereof of gross floor area unless the applicant can demonstrate that fewer will be required. No parking shall be permitted in the front yard.

- The 322 sq. ft. home office requires two parking spaces. If the three driveway parking spaces satisfy the residential parking requirement (which is three spaces), then those spaces cannot also satisfy the home office requirement. If any of the driveway spaces were to be designated for office parking, then they would not comply with the front yard prohibition, because all of the driveway is in a front yard. Under either scenario, the proposal requires a “d(3)” variance, pursuant to N.J.S.A. 40:55D-70d(3), to permit a deviation from this conditional use standard.

- C. §21-12.3.b.3 No more than 150 motor vehicle trip ends per week shall be generated by the home office use, each arrival or departure being considered one trip end.

- The Applicant testified there will be a maximum of 10 client visitors per day, 6 days per week, resulting in a total of 120 motor vehicle trip end per week. This condition is satisfied.

- D. §21-12.3.b.4 Safe and efficient vehicular and pedestrian circulation, parking and loading in the vicinity shall not be impaired.

- The Applicant testified and demonstrated sufficient compliance with this condition.

- E. §21-12.3.b.5 No more than two office employees shall be present at any one time. Nonresident professionals shall not be permitted to use the office on a regular basis.

- The Applicant testified there will be no office employees or nonresident professionals. This condition is satisfied.

- F. §21-12.3.b.6 The hours of normal operation shall be limited to the hours of 8:00 a.m. to 9:00 p.m., Monday through Saturday.

- The Applicant testified as to compliance with this condition.

- G. §21-12.3.b.7 The conditional use approval shall terminate with any change in the ownership of the property.

- The Applicant stipulated to this condition of approval.

7. The Applicant's proposal is depicted on Variance Map 33 Manchester Drive, prepared by Parker Engineering & Surveying, consisting of 1 sheet, latest revision dated 7/28/22; Architectural Plan, prepared by Jay Michael Petrillo, consisting of 2 sheets dated 7/11/2017; and a sketch of the garage / office area, consisting of 1 letter-size sheet, undated.

8. Frederick Zelley, Esq., having an address of 53 Division Ave., 1st Floor, Box 324, Millington, New Jersey, entered his appearance on behalf of the Applicant.

9. David Schley, P.P., A.I.C.P, the Township/Board Planner, and Thomas J. Quinn, PE, CME, the Board Engineer, were duly sworn according to law.

10. Jennifer Dietrich, the Applicant and the owner of the Property, at 33 Manchester Drive, Basking Ridge, NJ, was duly sworn. She testified that she purchased the Property in 2016. She proposed to convert part of the garage for a personal training business, primarily for adolescent athletes, but also for adults. She has an undergraduate degree in Biology, an MBA, and is certified by the ASCM. She testified she would have no employees, most of the sessions are 1 on 1, and there generally is only one vehicle in the driveway per session. She stipulated to maintaining 15 minute intervals between sessions to avoid overlap, and to complying with the maximum hours of operation of Monday – Saturday, from 8 am to 9 pm.

11. Ms. Dietrich explained the garage renovation for the personal training studio, limited to 322 sq. ft. of the front portion of the garage, with the garage doors remaining “as is.” She understands that the home office use, if approved, does not extend to subsequent owners, and she stipulated to same.

12. Ms. Dietrich testified that she spoke with her neighbors, and no one objected, and she described the neighborhood as purely residential and quiet. She stipulated that she would direct any vehicle that could not park in the driveway that they could not park on Manchester Drive, but rather must park along the Brandeis Ct. frontage of her Property.

13. On questioning, Ms. Dietrich clarified that the note on the plans was in error, and she intended to maintain the shed in its existing non-conforming location, thus requiring a side-yard accessory setback variance of 11.5 feet vs. 15 feet minimum permitted. She testified that the shed is used for personal storage, it is 12 by 20 feet (240 sq. ft.), and it already had to be relocated when the garage / home addition was constructed years earlier. She further testified that the original

portion of the home was built in the 1800's and pre-renovation, had a dirt basement and no storage space or even a garage. Ms. Dietrich further testified the shed has been at its present non-conforming location since 2018 with all required building / construction permits, and that if she were to have to move it a few feet now to conform, it would be a significant effort and expense and destroy the landscaping and foundational plantings around it. She further testified that the shed is located a significant distance from the dwellings on the adjacent lots to the north, and there exists significant landscape screening between them.

14. Mr. Zelle represented that he took the photographs submitted with the application materials in the early Fall of 2021, and they accurately depict what presently exists at the Property.

15. Ms. Dietrich introduced a photograph, as Exhibit A-1, indicating the drainage issues she experiences at her Property.

16. On Board questioning, Ms. Dietrich explained the 3 areas designated on the plans as gravel; one such area to the side of the garage, one area to the rear of the patio in the rear yard, and one area around the air conditioning units to the rear of the dwelling. The Board Professionals concluded that, even if all such areas were compacted or otherwise constituted impervious coverage, the Applicant still would not exceed the maximum lot coverage permitted by the Ordinance. Nevertheless, the Applicant specifically stipulated to compliance with the lot coverage requirements of the R-4 zone.

17. The Applicant stipulated that she would conduct no outside classes and all personal training would take place within the subject garage. She also stipulated to a maximum of 2 clients at a time / per session, and to maintaining a minimum interval of 15 minutes between personal training sessions to avoid overlap of vehicles, etc.

18. Ms. Dietrich explained her plan for 3 diagonal parking spaces in front of the garage area, as allowing one car to exit forward down the driveway rather than have to back out onto Brandeis Court. She testified that this system worked well while her sister lived with the Applicant's family during the Covid pandemic.

19. On Board questioning, Mr. Schley, the Board / Township Planner, testified that the intent of the "home office" parking requirements was to maintain a residential quality of life in the residential zones by minimizing, and managing, vehicle traffic and promoting safety.

20. On public questioning, the Applicant stipulated to compliance with all applicable building and fire code provisions, and explained the location of the 2 garage doors and 2 "person" doors to facilitate safe egress in the event of an emergency. On further public questioning, The Applicant stipulated to conducting no boot camp or similar type of outdoor classes at the Property.

21. Stephen Parker, PE, of Parker Engineering and Surveying, P.C., 370 E. Main Street, Somerville, NJ, was duly sworn, provided his credentials and was accepted as an expert in the field of civil engineering. He provided an overview of the existing conditions of the corner lot. Mr. Parker described the 2018 addition to the Applicant's single-family dwelling as well as the recent internal renovation of the garage.

22. Mr. Parker explained how the parking area design functions, with sufficient turnaround area for vehicles, and he confirmed that, even if all 3 areas designated as "gravel" on the plans constituted impervious coverage, the Applicant's Property still would be compliant with the maximum lot coverage requirement. He testified as to how the project satisfied the 4-criterion set forth in Section 21-12.2 of the "home office" conditional use ordinance, identified at comment #4 of Mr. Schley's memo.

23. On Board questioning, Ms. Dietrich explained the location of the façade lighting on the dwelling, which is manually activated except for timer-activated lights at the front door. The Applicant stipulated to no onsite advertising or other signage.

24. Donna Legband, a Basking Ridge resident whose elderly father and his caregiver live at Lot 9 (5 Tanglewood Lane), immediately adjacent to the Property and the subject garage, was duly sworn. Ms. Legband spoke in opposition to the application, primarily due to her concerns regarding her father's quality of life given the proximity of his bedroom to the garage where the personal training sessions will be held. Ms. Legband introduced into evidence, as Exhibit O-1, a photograph depicting the proximity of her father's home / bedroom to the subject garage and the relatively clear view from same. She conceded that, in late 2021, substantial tree clearing took place on her father's property that significantly increased his view of the subject garage; however, she testified that the clearing occurred before she and her father were aware of the subject application, which was filed in the Spring of 2022.

25. Mrs. Dietrich testified that it was not her present intention to erect an identification sign for the proposed home office use, and she stipulated that there would be no such onsite signage. She also stipulated that the approval shall be subject to compliance with all applicable zoning and construction code requirements, including, but not limited to, those relating to barrier-free accessibility.

DECISION

26. After reviewing the evidence submitted, the Board by a vote of 6 to 1, finds that the Applicant has demonstrated "special reasons" sufficient to grant the requested d(3) conditional use variance so as to permit the conversion of a 322 sq. ft. portion of the garage at the existing dwelling to be used as a "home office" for certified personal training.

27. The Board finds, consistent with the standards set forth in Coventry Square, Inc. v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), that the Applicant has established that the site can accommodate the problems associated with the proposed “home office” use in light of the intent underlying the conditions imposed by Section 21-12.3.b of the Land Development Ordinance, two of which (insufficient parking and parking in the front yard) would have been violated by the proposed use had variance relief not been granted. The Board determines that the personal training use inside a relatively small portion of the garage of the dwelling, provided on a 1 on 1 basis, with all of the conditions of approval stipulated to by the Applicant, will result in a relatively low intensity of use on the residential property, and one whose relatively modest detriments, including those relating to the slight deficiency in available parking, can be accommodated by the site. Given that, the Board finds that the Property can accommodate the problems associated with the violation of the conditional use requirements.

28. First, the Board recognizes that a “home office” is defined by the Ordinance as “the office of a physician, surgeon, dentist, attorney at law, architect, artist, real estate broker, mathematician, engineer, planner or person of like profession, which office is located within the residence of the person who practices such profession.” In the last 25 years, the Planning Board and the Board of Adjustment have heard a total of 13 applications seeking conditional use or conditional use variance approval for a home office. The types of professions that were found to be “home office” are as follows:

Planning Board

Investment manager
Piano instructor
Chiropractor
Medical doctor
Financial planner
Architect

Board of Adjustment

Graphic designer
Psychologist
Dentist
Hyperbaric oxygen therapy practitioner
Mental health therapist (2)

Herbal medicine / massage therapist

29. The Board finds that the Applicant's personal training business is similar to that of the medical professionals who are expressly included in the Ordinance, in that she, like those medical professionals, provides health services to clients on an individual basis. The Board finds that the proposed use satisfies this definition since it is for personal training to be prescribed by a certified professional who resides at the Property.

30. Second, the Board recognizes that a "home office" is a conditional use in the R-4 zone and, as such, it is permitted subject to the conditions listed at Section 21-12.3.b. Here, the only conditions that cannot be met relate to the number of available parking spaces and parking in the front yard. The Board finds that the Applicant has demonstrated that it is impracticable to arrange the parking any other way, the Property is a corner lot with multiple front yards, and the parking design has a history of functioning adequately pursuant to undisputed sworn testimony. The Board finds that the Applicant's property is a corner lot, fronting on both Manchester Drive and Brandeis Court. The Property is therefore encumbered by two front yards under the zoning ordinance, making the limitations upon front yard parking doubly burdensome for the Applicant. Moreover, the portion of the Property not deemed a front yard (essentially the northeast rear corner of the Property) is not practicable for parking, due to: (a) the topography of that portion; (b) the existing features located on that portion; and (c) the distant proximity of that portion to the subject garage. Furthermore, the creation of parking spaces in that portion, together with an access drive to the same, would drastically increase the impervious coverage on the Property, likely creating a different non-conformity (excess impervious coverage). The Board recognizes that the

Applicant's proposal does not require any construction or physical changes to the existing dwelling and / or the Property.

31. Third, the Board further finds that, pursuant to Section 21-12.2 of the Ordinance, the proposed conditional use will satisfy the following:

- A. Preservation of existing natural resources on the site;
- B. Safe and efficient vehicular and pedestrian circulation, parking and loading;
- C. Sufficient screening, landscaping and locations of structures and exterior lighting; and
- D. The proposal conforms to surrounding buildings and developments and to such development as is permitted by right within the zone.

32. In sum, the Board finds that the Applicant has satisfied the positive criteria required for the grant of a d(3) conditional use variance.

33. The Board further finds that the Applicant has satisfied the negative criteria for a d(3) conditional use variance. The Board finds the Applicant has demonstrated that the requested variance 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. In this regard, the Board recognizes that the proposed home office use is a permitted conditional use in the R-4 zone, that the existing and stipulated conditions mitigate the relatively modest detriments resulting from the Applicant's proposal, and only one member of the public objected to the application.

34. Finally, the Board finds the Applicant has satisfied both the positive and negative criteria for entitlement to bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(1), for the location of three (3) parking spaces in the front yard in a residential zone, whereas, the Ordinance permits only one (1) such parking space. The Board again recognizes that the front-yard parking

spaces are based upon the hardship created by the lot having two front yards and by the topography of, and the features existing upon, the portion of the Property not deemed a front yard. The negative criteria are also satisfied, as the parking variance(s) can be granted without substantial detriment to the public good and without substantial impairment of the intent and the purpose of the zone plan and zoning ordinance.

WHEREAS, the Board took action on this application at its meeting on September 7, 2022, 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 13th day of October, 2022, that the application of **JENNIFER DIETRICH**, 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 limit the home office use to personal training by the Applicant and the home office space to the designated 322 square feet portion of the garage of the dwelling located on the Property;
- (3) The Applicant shall comply with the hours of operation which are limited to the hours of 8:00 am to 9:00 pm, Monday through Saturday;
- (4) The within conditional use approval shall terminate if the Applicant no longer either owns the Property, in whole or part, or resides therein, and the Applicant shall be required to make an affirmative statement, in writing, to all subsequent purchasers of the Property, stating that the conditional use as a home office will terminate unless the subsequent purchaser seeks the requisite Board approval. Said written statement shall be included in the contract of sale of the Property;
- (5) The Applicant shall direct any vehicle not able to park in the driveway that same shall not park on Manchester Drive but rather shall park along the Brandeis Ct. frontage of her Property;

- (6) The Applicant shall comply with the lot coverage requirements of the R-4 zone. The Variance Map shall be revised to specify which gravel areas are used as walkway or patio (areas that count as lot coverage) and which gravel areas are used solely as a landscape mulch / groundcover or drainage feature (areas that do not count as lot coverage), and the lot coverage calculations shall be revised accordingly, subject to review and approval by the Township Zoning Officer;
- (7) The Applicant shall conduct no “boot camp” or similar type of outside classes, and all personal training shall take place within the subject garage;
- (8) The Applicant shall have a maximum of 2 clients at a time / per session and shall maintain a minimum interval of 15 minutes between personal training sessions to avoid overlap of vehicles, clients and the like;
- (9) The Applicant shall comply with all applicable building and fire code provisions;
- (10) The Applicant shall have no onsite advertising or other signage;
- (11) The conditional use approval herein shall terminate with any change in ownership of the Property;
- (12) The Applicant shall obtain a construction permit and a certificate of occupancy and shall comply with all applicable zoning and construction code requirements, including, but not limited to, those relating to barrier-free accessibility;
- (13) 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; and
- (14) 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.

ROLL CALL VOTE:

Those in Favor: Baumann, Genirs, Cambria, Kraus, Pochtar, Tancredi

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 October 13, 2022.

Cyndi Kiefer

CYNDI KIEFER, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: October 13, 2022