

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v3
Regular Meeting
December 7, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:36 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, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

APPROVAL OF MINUTES

November 9, 2022 – Regular Session – On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted. Ineligible: Amin, Cambria, Helverson, Kraus

APPROVAL OF RESOLUTIONS

[Ratz, William & Lorena](#); Block 803, Lot 13; 27 Brentwood Court; ZB22-022 (withdrawn) – Ms. Baumann moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

[Resolution #23-06 – Appointment of Board Traffic Engineer](#) – Joseph A. Fishinger, PE, PP, PTOE – Mr. Tancredi moved to approve the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

[Finley Real Estate LLC](#); Block 1801, Lot 1; 55 South Finley Avenue; ZB21-031 (approved) – Mr. Warner advised the Board that the Applicant's attorney has requested that the matter be carried to the 01/04/2023 hearing.

COMPLETENESS AND PUBLIC HEARING

[Devaney, J. E./Mistry-Devaney, K.](#); Block 7601, Lot 29; 476 Lyons Road; Bulk Variance; ZB22-029
Present: Daniel A. Encin, RA, Architect for the Applicants
K. Mistry-Devaney, Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Devaney, Ms. Mistry-Devaney, Mr. Encin, Mr. Quinn and Mr. Schley were duly sworn.

Kalpana Mistry-Devaney, Applicant residing at 476 Lyons Road, testified that the proposed project, construction of a one-story addition with a covered entry on the north side of the existing dwelling, requires relief for encroachment into the front yard setback. She added that the pictures submitted with the application were taken by her approximately one (1) month earlier and that they accurately depict the property as it currently exists. Finally, Ms. Mistry-Devaney testified that she had heard no negative comments from any of the neighbors.

Daniel A. Encin, RA, architect with the firm of *Mendham Design Architects LLC*, Mendham, NJ, was accepted by the Board as an expert in the field of architecture. He gave a brief description of the project, noting that the entire dwelling (except for the deck) is located in the front yard setback making a conforming addition impossible. Mr. Encin added that the setback deviation for the addition is less than that of the existing house and confirmed that the exterior of the house and addition will be consistent in color, materials and architectural detail.

The comments in Mr. Schley's memo (11/18/2022) and in Mr. Quinn's memo (11/30/2023) were addressed to the satisfaction of the Board. The Environmental Commission (EC) had no comment.

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

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria for both a "c(1)" or "hardship" variance and "c(2)" or "benefits outweigh detriments" variance. Ms. Baumann 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, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin, Helverson

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Sell, Adam & Sarah Joy; Block 5801, Lot 14; 31 Lyons Place; Bulk Variance; ZB22-030

Present: Adam Sell, Applicant

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

Adam Sell, Applicant residing at 31 Lyons Place, testified that the proposed project, construction of an in-ground pool and an adjoining patio/walkway to the rear of the existing dwelling, requires relief for exceeding the maximum allowable lot coverage. He added that the pool patio was designed to be as small as possible while still functional because he was aware of the coverage issue. To help mitigate the overage, Mr. Sell proposed to install a stormwater management system even though the project did not exceed the 1,000 sq. ft. threshold which would have triggered that requirement. He confirmed that he had taken the photos submitted with the application and that they accurately depict the property as it currently exists. Finally, he stated that he had not heard any concerns from the neighbors.

In response to a question raised by Mr. Quinn, Mr. Sell said he needed to widen the coping along the south side of the pool to provide an area to anchor the pool cover. He also agreed to move the pool and fencing out of the sanitary sewer easement and closer to the dwelling. This would make the walkway shorter and hence, decrease coverage. Given these changes, Mr. Sell amended his application to requires an additional 35 square feet of coverage, raising the proposed coverage from 16.67% to 16.74%.

The comments in Mr. Schley's memo (11/18/2022), Mr. Quinn's memo (11/30/2023) and the EC's memo (11/30/2022) were addressed to the satisfaction of the Board.

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

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria for both a "c(1)" or "hardship" variance and "c(2)" or "benefits outweigh detriments" variance. 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 Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Tancredi seconded.

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

Motion carried.

COMPLETENESS HEARING

Priscilla's Pantry LLC; Block 801, Lot 4.01; 199 Morristown Road; Amended Preliminary/Final Site Plan, Bulk & "d" Variances; ZB22-027

After reviewing Mr. Schley's memo (11/14/2022) which stated that the Applicant had submitted all applicable items not previously waived by the Board, Mr. Tancredi moved to deem the application complete.

Mr. Cambria seconded.

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

Motion carried.

PUBLIC HEARING

Priscilla's Pantry LLC; Block 801, Lot 4.01; 199 Morristown Road; Amended Preliminary/Final Site Plan, Bulk & "d" Variances; ZB22-027

Present: Frederick B. Zelle, Esq., Attorney for the Applicant
Catherine Mueller, PE, CME, Engineer for the Applicant
Priscilla Vincent, Owner of the Applicant LLC

Mr. Warner stated that although the content of the notice for this application was sufficient and it was published in a timely manner, service was deficient in that the fire company and the utilities which require notice were not served. Representing the Applicant, Frederick B. Zelle, Esq., attorney with a business address of 33 Division Avenue, Millington, NJ advised that his office had received waivers from the fire company and all but two (2) of the utilities. He added that he had received confirmation from both utilities that waivers would be forwarded. **Exhibit A-1**, copies of the waivers which were received, was entered into evidence. Mr. Warner stated that as a condition of approval, the outstanding waivers must be submitted prior to the resolution being adopted. If the Applicant fails to do so, any approvals granted tonight would become null and void and the Applicant would be required to return to this Board. The Board agreed with the condition as stated by Mr. Warner as did Mr. Zelle.

Ms. Mueller, Ms. Vincent, Mr. Quinn and Mr. Schley were duly sworn.

Mr. Zelle stated that the project, installation of a freestanding walk-in refrigeration unit in front of the existing Priscilla's Pantry building (replacing two existing exterior rental units), requires both "c" and "d" variances. The Applicant also proposes to install a freestanding identification sign along North Maple Avenue which requires an additional variance. Mr. Zelle testified that he had taken the photos submitted with the application shortly before it was filed and that they accurately depict the property as it currently exists.

Mr. Warner explained that the current commercial use (Priscilla's Pantry) is not a permitted use in the E5 zone and that it was approved in prior resolutions as a "d-1" use variance. Because this application proposes an expansion of that use, it requires a "d-1" use variance, not a "d-2" expansion of a *preexisting nonconforming* use variance.

Priscilla Vincent, owner of Priscilla's Pantry LLC, described her business as a "grab-and-go" establishment with no waitstaff. The two (2) rental refrigeration units were required because during the pandemic, her business expanded to the point where the existing refrigeration facilities inside the building were inadequate. She testified that the new unit which will replace the rental units, is proposed to be close to and in front of the existing building (facing US

Highway 202) and that it would be nowhere near the entrance used by customers. She added that it could not be located behind the building because the a/c units and parking are located there. She confirmed that there would be no exterior lighting on the unit and that the exterior of the unit would match the existing building in color.

Ms. Vincent testified that relief is also being sought for an existing post-mounted sign along North Maple Avenue which is proposed to be moved back so that it will be 1' outside of the right-of-way (where 20' is required). Although a freestanding monument sign was permitted (but never installed) along Morristown Road in the 2016 approval, this proposal seeks to keep the post-mounted sign and add lighting that would be shielded from the drivers' view.

Noting that parking is adequate most of the time, Ms. Vincent testified that the new unit would take up less space than the two (2) existing units and lessen the number deliveries.

Catherine Mueller, PE, CME, principal engineer with the firm of *Page-Mueller Engineering Consultants PC*, Warren, NJ, was accepted by the Board as an expert in civil engineering. She addressed the relief sought, opining that the increases in lot coverage and FAR ("d-4") are di minimus. She noted and that the area requiring a separation variance (minimum required distance between structures) is confined to one small pinch point in the walkway between the unit and the building. She added that if a tree is in conflict, it would be relocated, not removed. She also addressed the relief sought not only for the post mounted sign but for two (2) existing, not previously approved, wall mounted signs which in total square feet exceed the maximum allowed signage area.

A discussion ensued about the possibility of relocating the new unit or providing architectural screening for the condensers located on the top and vegetative screening for the unit itself. The Applicant agreed to provide screening for both reiterating that the proposed location represented the best option.

The comments in Mr. Schley's memo (11/18/2022), Mr. Quinn's memo (11/30/2023) and the EC's memo (11/30/2022) were addressed to the satisfaction of the Board.

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

Mr. Zelle opined that the testimony provided by Ms. Vincent and Ms. Mueller satisfied the statutory requirements for the Board to grant the requested relief.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria for the relief requested. Mr. Tancredi moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Pochtar seconded.

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

Motion carried.

COMMENTS FROM MEMBERS OR STAFF – NONE.

ADJOURN - Moved by Ms. Baumann, seconded by Mr. Amin, all in favor and carried, the meeting was adjourned at 10:30 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 01/04/2023.

12/20/2022 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**WILLIAM and LORENA RATZ
Case No. ZB22-022**

RESOLUTION – WITHDRAWAL WITHOUT PREJUDICE

WHEREAS, **WILLIAM and LORENA RATZ** (the “Applicants”) proposed to construct a 510 sq. ft. addition and reconstruct an existing 410 sq. ft. exterior deck with a pergola located on property designated as Block 803, Lot 13, on the Township Tax Map, more commonly known as 27 Brentwood Ct.; and

WHEREAS, the application, having been deemed incomplete, on August 9, 2022; and

WHEREAS, the Applicants requested that their application be withdrawn without prejudice; and

WHEREAS, the Rules and Regulations of the Board provides, at Rule 2:4-7, that “any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed without prejudice”; and

WHEREAS, the Board Attorney advised the Board that applicable case law, specifically the decision in Sansone Oldsmobile-Cadillac, Inc. v. Shrewsbury Borough Bd. of Adj., 211 N.J. Super. 304 (Law Div. 1986), provides that, where, as here, an applicant seeks to withdraw a pending application before a zoning board of adjustment without prejudice, the principles of N.J. Court Rule 4:37-1(b) should be applied, such that a request to grant a voluntary dismissal without prejudice during the pendency of an application is within the discretion of the Board and the Board may impose reasonable terms and conditions; and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of December, 2022, that the request by the Applicants, for voluntary dismissal without prejudice of their application, as aforesaid, be granted, subject to the following condition:

The Applicants shall post funds with the Township sufficient to satisfy any and all deficiencies in the Applicants' escrow account and shall remain obligated to replenish that escrow account and otherwise reimburse the Township for all expenses incurred by it and its professionals in connection with the application.

ROLL CALL VOTE:

Those in Favor: Baumann, Cambria, Genirs, Kraus, Pavlosky, 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 December 7, 2022.

Cyndi Kiefer

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

Dated: December 7, 2022



Resolution of the Township of Bernards Zoning Board of Adjustment

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #23-06

Professional Services Contract for 2023 Board of Adjustment Traffic Engineer
Awarded to Joseph A. Fishinger, PE, PP, PTOE, NJ Lic #24GE04613400 of Bright View Engineering LLC, 70 South Orange Avenue, Ste. 109, Livingston, NJ 07039
In the Not to Exceed Amount of \$ 4,500 for Traffic Engineering Services and
Matters funded by Escrow Trust In the Not to Exceed Amount of \$ 17,500.00

BE IT RESOLVED, by the Bernards Township Zoning Board of Adjustment (herein “Board”), Somerset County, New Jersey, as follows:

WHEREAS, the Bernards Township Zoning Board of Adjustment wishes to engage the services of an engineer to perform engineering services as required for the year 2023, which is a “professional service” as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, Bernards Township Zoning Board of Adjustment has special confidence in Joseph A. Fishinger, PE, PP, PTOE, NJ Lic #24GE04613400 of the firm Bright View Engineering LLC by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2023 Current Fund Budget, Board of Adjustment -Fees and Compensation line account #3-01-21-185-204 (\$4,500.00) and Escrow Trust Account - Board of Adjustment line account # T-13-56-050-BAO (\$17,500.00) for a total not to exceed amount of \$ 22,000.00.

NOW BE IT RESOLVED by the Township of Bernards Zoning Board of Adjustment that a professional service contract be awarded to Joseph A. Fishinger, PE, PP, PTOE, NJ Lic #24GE04613400 of the firm Bright View Engineering LLC as follows:

1. The contract will encompass services as outlined in the submitted contract proposal dated November 10, 2022, appended to this resolution.
2. The contract term is from January 1, 2023 through December 31, 2023 at the hourly rate of \$175.00 at a not to exceed amount of \$4,500.00 plus escrow funds paid by applicant in accordance with Bernards Township Ordinance No.1018.
3. The line item appropriation for professional engineering services of \$4,500.00 shall be charged to line account #3-01-21-185-204 and Escrow Trust Account – Board of Adjustment of \$17,500.00 shall be charged to line account T-13-56-050-BOA.
4. Billings must be rendered by the contractor within 30 days of service delivery
5. Any modification to this contract shall be in writing and signed by both parties and upon obtaining said signatures shall immediately become part of the contract.
6. No payments in excess of the “not to exceed” contract amounts will be approved, unless such services/expenditures are negotiated and agreed upon in advance of service delivery.

7. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to PL 1975, c127, which is attached to this resolution as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Bernards Township Zoning Board of Adjustment engage Joseph A. Fishinger, PE, PP, PTOE NJ Lic #24GE04613400 of the firm Bright View Engineering LLC designated as the individual specifically authorized to act in the Board's behalf and in his absence any other Engineer in that firm as he may designate.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Joseph A. Fishinger, PE, PP, PTOE, NJ Lic #24GE04613400 of the firm Bright View Engineering LLC which contract [*appended to this resolution*] shall be available for inspection at the Bernards Township Zoning Board of Adjustment Offices during regular business hours.

NOW THEREFORE BE IT FINALLY RESOLVED, that Notice of this Resolution and the terms of the contract for services be published once in an official newspaper of the Board, as required by N.J.S.A. 40A:11-5(1) (a) (I).

I agree to the terms as stated in this Resolution and by signing this document, I am committed to follow all terms of this award.


Joseph A. Fishinger, PE, PP, PTOE, NJ Lic #24GE04613400

CFO CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for this contract. The line item appropriations to be charged are Board of Adjustment Fees and Compensation line account #3-01-21-185-204 in the not to exceed amount of \$4,500.00 and the line item appropriation to be charged for Escrow Trust Account - Board of Adjustment line account # T-13-56-050-BAO in the not to exceed amount of \$17,500.00.



Sean McCarthy, Chief Financial Officer

Date: November 28, 2022

PURCHASING CERTIFICATION

I hereby certify that I have reviewed this resolution for accuracy.


For Purchasing Agent

Francis J. Decibus, QPA
Purchasing Agent

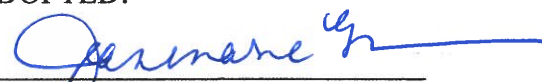
Date: November 28, 2022

Dated: December 7, 2022

ATTEST:


Cyndi Kiefer, Board Secretary

ADOPTED:


Jeanmarie Genirs, Chairwoman