

TOWNSHIP OF BERNARDS

PLANNING BOARD

MINUTES ^{v2}

REGULAR SESSION

April 5, 2022

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

FLAG SALUTE

OPEN MEETING STATEMENT - Chairwoman Piedici read the following statement:

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this meeting of the Planning Board 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 mailed to the Bernardsville News, Whippany, and to the Courier News, Bridgewater on January 19, 2022 and was mailed to all those people who have requested individual notice and paid the required fee.

The following procedure has been adopted by the Bernards Township Planning Board. 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: Baumann, Crane, Damurjian, Eorio, McNally, Mallach, Manduke, Mastrangelo, Piedici
Members Absent: Seville
Members Late: Manduke (7:39 PM)
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Township Planner, David Schley, PP, AICP;
Board Planner, David Banisch, PP, AICP; Board Secretary, Cyndi Kiefer

Moved by Ms. Mastrangelo, seconded by Mr. Baumann, all eligible in favor and carried, that the February 22, 2022 absences of Mr. Damurjian and Ms. Manduke be excused. (Ineligible: Damurjian)

Moved by Mr. Baumann, seconded by Deputy Mayor McNally, all eligible in favor and carried, that the April 5, 2022 absence of Mr. Seville be excused.

APPROVAL OF MINUTES

February 22, 2022 – Regular Session - On motion made by Mr. Crane and seconded by Ms. Mastrangelo, all eligible in favor and carried, the minutes were adopted as drafted. (Ineligible: Damurjian)

APPROVAL OF RESOLUTION

[Fellowship Village Senior Living Inc.](#); Block 9301, Lot 33; 8000 Fellowship Road; PB20-005A (approved)

Ms. Mastrangelo moved approval of the resolution as drafted and Mr. Crane seconded.

Roll call:	Aye:	Baumann, Crane, Damurjian, Eorio, McNally, Mastrangelo, Piedici
	Nay:	NONE
	Ineligible:	Mallach

Motion carried.

Ms. Manduke joined the meeting at 7:39 PM.

APPOINTMENT OF LANDSCAPE COMMITTEE

[Christopher Bell & CC Edwards Developers LLC](#); Block 7702, Lots 10 & 11; 3526 & 3536 Valley Road; PB11-011
Chairwoman Piedici, Mr. Damurjian and Mr. Baumann volunteered to serve on the Landscape Committee.

Martin, J./Berman, L.; Block 2001, Lot 4; 35 Spruce Street; PB19-006

Chairwoman Piedici, Deputy Mayor McNally and Ms. Mastrangelo volunteered to serve on the Landscape Committee.

PUBLIC HEARING

Ahmed, F./Faizan, A./Kirkwood, Kevin & Nathalie; ZB21-030; Block 2301 Lots 4 & 5; 48 & 62 Wisteria Way; Amended Preliminary/Final Subdivision; PB21-005

Present: Faizan Ahmed/Anila Faizan, Applicants
Kevin & Nathalie Kirkwood, Applicants

Mr. Damurjian, Ms. Mastrangelo, Mr. Crane and Chairwoman Piedici all stated that they had visited the site and they shared their observations about the subject properties and the easement area.

Mr. Ahmed, Dr. Faizan, Mr. Kirkwood, Mrs. Kirkwood, Mr. Banisch and Mr. Schley were duly sworn.

Faizan Ahmed, applicant and co-owner of the 62 Wisteria Way property (Lot 5) testified that there is a paved emergency access road which was created when the subdivision approvals were granted in 2001 and 2002. It traverses both his property and that of the Kirkwoods (48 Wisteria Way, Lot 4) and this application seeks to amend a condition of approval (#8) listed in the July 11, 2001 resolution requiring that the owners of Lots J and K (present day subject Lots 4 and 5, respectively) maintain that emergency access road.

Mr. Ahmed stated that when the Planning Board reviewed the subdivision application, it applied both the cul-de-sac limit set forth in the NJ Residential Site Improvement Standards (RSIS) which is based on average daily traffic and the cul-de-sac limit set forth in the Township Land Development Ordinance which is based on measured length. The subdivision complied with the RSIS limit however, it did not comply with the Township's 1,000-foot maximum allowable length, thus requiring relief in the form of Condition #8 to allow the proposed length of 1,900 feet. Mr. Ahmed stated that after the Wisteria Way subdivision approvals were granted, the NJ Department of Community Affairs issued RSIS Clarification #4 for cul-de-sacs which stated that, "...any attempt by a municipality to impose a length limit is in conflict with the RSIS. Such provisions have been superseded by RSIS and are unenforceable." Mr. Ahmed opined that this clarification constitutes a change in circumstances that warrants elimination of the emergency access road. Mr. Drill opined that because the Planning Board did not enforce the 1,000-foot limit, the clarification was moot. Instead, the Board felt an emergency access road was needed for safety purposes because of the 1,900-foot length of the cul-de-sac.

Mr. Ahmed noted that a comparable situation existed with the Emerald Valley development noting that that cul-de-sac is much longer than Wisteria Way and that that development contains twice as many houses. The Planning Board eliminated a similar condition requiring maintenance of the emergency access road and recommended to the Township Committee that the easement be vacated. He testified that there are only 11 houses on Wisteria Way and that the emergency access road gets little, if any use. Chairwoman Piedici stated that according to a memo from the Township's fire official Frank N. D'Amore, Jr. and the Basking Ridge Fire Company dated 02/14/2022, the emergency road had been used for emergency purposes when a tree fell, blocking a portion of Wisteria Way. Mr. Drill noted that in Paragraph 4(b) of the Emerald Valley resolution (PB20-001) which granted a similar request, it states that there had "...never been an emergency situation arising in the subdivision which required an emergency vehicle to use the emergency access road since it was installed." He added that during that application hearing, the Liberty Corner Fire Company, Liberty Corner First Aid Squad and the Township Fire Official had no objections to eliminating the condition, opining that if there was an obstacle on Emerald Valley Lane which prevented vehicular passage, emergency vehicles could drive on lawns to circumvent it. In this case, both the fire department and the fire official spoke against eliminating the condition in their memo. He stated that the Planning Board's action in the Emerald Valley case is distinguished by no objection from emergency officials. Kevin Kirkwood, applicant residing at 48 Wisteria Way, testified that he had lived in the development since the beginning, and that he had never seen the road used by emergency vehicles. Mr. Ahmed added that he had spoken to all of the neighbors and that none had voiced any objections to eliminating the road. A discussion ensued as to the number of houses the emergency access road could actually service and whether there could be alternate means to reach all of the homes if the easement were to be vacated.

Mr. Drill noted that this application proposed to vacate the condition and he asked Mr. Ahmed whether he wanted to amend it to request that the requirement to maintain the road be eliminated. Although conceding that maintenance is minimal, Mr. Ahmed stated that the easements split up his back yard and in addition to the steep slopes, it further limits the area of usable property. Anila Faizan, applicant and co-owner of the 62 Wisteria Way property, added that the road would compromise their sense of privacy in the back yard. A discussion ensued about the feasibility of moving the easement to a more favorable location.

A straw poll was taken indicating that the Board wanted to hear testimony from the fire official and a representative from the Basking Ridge Fire Department about prior usage of the emergency access road and alternative means of access for emergency vehicles should the easement be vacated.

Mr. Drill asked that Board Engineer Larry Plevier, PE, CME, be consulted as to whether there are any provisions in the RSIS prohibiting a board from requiring that an emergency access easement be provided in specific cases.

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

Mr. Drill announced that the application would be carried to the regularly scheduled 05/03/2022 meeting of the Planning Board with no further notice. He also asked the applicants to supply an extension of time to act to 05/31/2022.

MASTER PLAN REVIEW – Chapter V – Circulation Plan Element

After a brief introduction of the Circulation Plan Element draft by Mr. Banisch, the Board discussed several of the concepts presented in the draft such as historic areas and pedestrian friendly areas. Some of the suggestions for inclusion are as follows: highlight the decrease in traffic generation for the currently approved Mountain View project (apartments and townhouses) versus the originally approved office complex, clarify the connector road reference, add the location of electric vehicle charging stations and designate the Dewy Meadow passive recreation field as a recreation resource. Mr. Banisch agreed to incorporate the revisions/additions and present the final draft at the next meeting.

Hearing no further discussion from the Board, Chairwoman Piedici invited members of the public to comment.

Todd Edelstein, 172 Riverside Drive, discussed investigating the expansion of the New Jersey Transit train schedule to include weekends, corrections/additions to existing maps and the designation of scenic routes.

Hearing no further comments, that portion of the meeting was closed.

Chairwoman Piedici advised the Board that at the May 17, 2022 meeting, the revised drafts of the Circulation Plan Element and the Conservation and Open Space Plan Element would be discussed.

COMMENTS FROM MEMBERS OR STAFF – Mr. Crane commented that the majority of the current board members' properties did not comply with the Township's current zoning ordinances.

ADJOURN

Moved by Deputy Mayor McNally and seconded by Mr. Baumann, all eligible in favor and carried, the meeting was adjourned at 9:37 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Planning Board

Adopted as drafted 05/03/2022

04/26/2022dsjdkp

BERNARDS TOWNSHIP PLANNING BOARD

FELLOWSHIP SENIOR LIVING, INC.

**BLOCK 9301, LOT 33
8000 FELLOWSHIP ROAD**

APPLICATION #PB20-005A

**RESOLUTION MEMORIALIZING THE MODIFICATION TO CONDITION OF
PRIOR APPROVALS TO ALLOW EXTENSION OF TIME PERIOD TO REVISE
PLANS AND OBTAIN SIGNATURES**

WHEREAS, Fellowship Senior Living, Inc. (the “**applicant**”) owns an irregularly shaped 72.569-acre lot located at 8000 Fellowship Road in the Township of Bernards (the “**Township**”), which is designated on the Township tax maps as Block 9301, Lot 33 (the “**property**”);

WHEREAS, the property is situated in the R-2 residential zoning district (the “**R-2 zone**”) and contains a conditionally permitted Continuing Care Retirement Community (“**CCRC**”) comprised of a number of buildings and related site improvements known as “Fellowship Village” (“**Fellowship Village**” or the “**existing development**”), including a community center (the “**community center**”), a health center building (the “**health center**”), various parking areas (the “**parking areas**”), and stormwater management facilities (the “**stormwater management facilities**”);

WHEREAS, the applicant applied for and obtained from the Bernards Township Planning Board (the “**Board**”) certain approvals (the “**prior approvals**”) including preliminary and final major site plan approval, conditional use approval, and exceptions from certain site plan ordinance requirements (the “**application**”) to make certain improvements to Fellowship Village, specifically to: (1) construct a new, two-floor, approximately 14,447 square foot fitness center and salon, (2) expand the area proposed for the women’s locker room by 180 square feet and make interior renovations to the proposed areas for the men’s and women’s locker rooms, (3) create ¼ miles of gravel and elevated walkways within the conservation easement and wetlands area of the Property; (4) add observation decks along the trail to serve as bird blinds and sitting areas; (5) construct a dog park, and pickleball, bocce ball and shuffleboard courts; (6) add sitting areas, stone piers, and low level illumination at Spruce Grove, and replace the existing paths; (7) construct a 14’ x 15’ pond deck at Ephesus Pond; and (8) make minor modifications to increase the number of parking spaces, specifically the addition of one (1) space to Antioch Court, the addition of two (2) spaces to Beersheba Court, and the conversion of two (2) ADA spaces at the Main Entrance (building construction and renovation as well as the site improvements together referred to as the “**proposed development**”), as memorialized in a resolution adopted by the Board on June 8, 2021 (the “**Resolution**”);

WHEREAS, the Resolution was subject to a number of conditions, including Condition #1, which provides in relevant part as follows:

1. **Revisions to the Plans and Other Documents Submitted for Approval.**

Revisions to the documents referenced below shall be made to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and as required by the conditions set forth below, and to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Township Engineer and Township Planner, with the revisions being made to all of the documents and the site plans being signed no later than December 8, 2021 (which is six (6) months from the date the within resolution was adopted on June 8, 2021), and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the site plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution shall expire and become automatically null and void.

WHEREAS, the applicant applied to the Board by letter from its attorney dated December 21, 2021 seeking a modification to Condition #1 of the Resolution to extend the time period within which the applicant has to revise the plans and obtain signatures on the plans from December 8, 2021 to June 8, 2022 (the “**extension application**”);

WHEREAS, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:55D-60;

WHEREAS, the Board considered the extension application at duly noticed public hearing¹ on January 18, 2022, during which hearing the applicant was represented by Jennifer Phillips Smith, Esq. (of Gibbons P.C.), and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS, AFTER CONSIDERING THE PRIOR APPROVALS
AS WELL AS THE REASONS PROVIDED IN SUPPORT OF THE EXTENSION**

¹No notice was required for the hearing on the application because N.J.S.A. 40:55D-12a does not require notice of a hearing on: (1) an extension of an approval for a period of less than five (5) years; and (2) a modification of a condition unless the modification is “significant.” The Board finds and notes that the extension aspect of the application is for a period less than five (5) years. The Board finds that, while the underlying condition is important to ensure that the applicant proceeds diligently with its approvals, modifying the condition to grant an extension of time is not a “significant” condition for purposes of notice where the extension request is for less than a 5-year period. The Board notes that, had the modification aspect of the application sought to eliminate the condition in its entirety, the Board would have found that to be significant and would have required notice. That said, although not required, the applicant provided both mailed and published notice for the extension application as a courtesy.

APPLICATION, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. **The Extension Application.** As set forth above, the extension application seeks the following relief: a modification of condition #1 of the Resolution to allow for an extension of the time period within which the applicant has to revise the plans and obtain signatures thereon from December 8, 2021 to June 8, 2022.

2. **Standards for Considering the Request for Modification of Condition #1 of the Resolution.** Our courts have held that a Board has the power to modify and/or eliminate prior approval conditions upon a “proper showing of changed circumstances”, or upon “other good cause” warranting modification and/or amendment, or if “enforcement of the restrictions would frustrate an appropriate purpose.” Cohen v. Fair Lawn, 85 N.J. Super. 234, 237 (App. Div. 1964); Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), cert. denied 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990). N.J.S.A. 40:55D-12a recognizes the authority of a board to modify previously imposed conditions by requiring that public notice be given “for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice.” The court in Cohen, 85 N.J. Super. at 237-238, noted that even if a condition is agreed to by an applicant, it can be later eliminated if its elimination will not have an adverse effect on public health or safety, and this is especially so where the underlying use serves the general welfare. As to the “good cause” grounds, our courts have held that a board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or eliminate the condition is consistent with or contrary to that intent. Sherman, 242 N.J. Super. at 430. In this regard, our courts have held that a board is not limited to the four corners of the resolution to determine intent and can consider Board minutes of the underlying hearing, transcripts if available, and/or expert reports filed with the application. The object is to determine how significant the condition was, meaning whether the underlying approval would not have been granted without the imposition of the condition, or whether the condition was imposed for general welfare purposes only, meaning to advance the general welfare but not critical for the survival of the underlying approval. Id.

3. **Good Cause Exists for Modification of Condition #1 of the Resolution.** Turning to the issue of whether or not to modify Condition #1, the Board finds that good cause exists to grant the request for such a modification. The Board recognizes and finds that the applicant has worked diligently to complete and address the conditions of approval set forth in the Resolution, but that certain of the conditions require coordination and approvals from outside agencies and departments. Coordination with these agencies and departments has taken an extensive period of time for various reasons and to ensure a final plan and design is approved in

accordance with Resolution and agency requirements. As such, the applicant is in need of additional time to fully finalize its plan design. As such, the Board finds that allowing the applicant additional time to finalize the details and design of its plans would be beneficial. The Board finds that no negative impacts will result from modifying Condition #1 as proposed because the request is to allow the applicant time to ensure all outside agency approvals are in place and obtained and that its final design can be achieved and approved. For all of the foregoing reasons, the Board finds that good cause exists to warrant the grant of the modification of the condition to reflect the time period extension.

NOW, THEREFORE, BE IT RESOLVED BY THE BERNARDS TOWNSHIP PLANNING BOARD, BY MOTION DULY MADE AND SECONDED ON JANUARY 18, 2022, AS FOLLOWS:

1. **Grant of Modification to Condition #1 of the Resolution.** Subject to the conditions set forth below, Condition #1 of the Resolution is modified to extend the time period within which the applicant has to do revise the plans and obtain signatures thereon from December 8, 2021 to June 8, 2022.

B. CONDITIONS

1. **Condition # 1 of the Resolution Revised.** The relevant portion of condition # 1 of the Resolution is hereby revised to provide as follows:

1. **Revisions to the Plans and Other Documents Submitted for Approval.** Revisions to the documents referenced below shall be made to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and as required by the conditions set forth below, and to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Township Engineer and Township Planner, with the revisions being made to all of the documents and the site plans being signed no later than June 8, 2022, and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the site plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution shall expire and become automatically null and void.”

2. **Subject to all Conditions of prior approvals which have not been modified herein.** The site shall remain subject to all conditions of prior Board approvals not specifically eliminated or modified in the within resolution.

3. **Subject to Other Approvals and Laws.** The within approval and the use of the property are also conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the

property and/or use of the property. The within approval and the use of the property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

VOTE ON MOTION DULY MADE AND SECONDED ON JANUARY 18, 2022:

THOSE IN FAVOR: BAUMANN, CRANE DAMURJIAN, MCNALLY, MANDUKE, MASTRANGELO, SEVILLE, EORIO & PIEDICI

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on April 5, 2022 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
BAUMANN	X			
CRANE	X			
DAMURJIAN	X			
MANDUKE				X
MASTRANGELO	X			
MCNALLY	X			
SEVILLE				X
EORIO	X			
PIEDICI	X			

I, Cyndi Kiefer, 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 memorializing resolution duly adopted by the said Planning Board on April 5, 2022.

Cyndi Kiefer

CYNDI KIEFER, Board Secretary