

TOWNSHIP OF BERNARDS **PLANNING BOARD**

MINUTES v2 **REGULAR SESSION** August 16, 2022

Chairwoman Piedici called the meeting to order at 7:30 PM.

FLAG SALUTE

Chairwoman Piedici read the following open meeting and procedural statements:

OPEN MEETING 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 p.m. and no new witnesses or testimony heard after 10:30 PM."

ROLL CALL

Members Present: Baumann, Crane, Ladyzinski, McNally, Mallach, Manduke, Mastrangelo, Piedici, Seville
Members Absent: Damurjian, Eorio
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Board Planner, David Banisch, PP, AICP;
Board Secretary, Cyndi Kiefer

Moved by Ms. Mastrangelo, seconded by Mr. Crane, all eligible in favor and carried, the absences of Mr. Damurjian and Mr. Eorio were excused.

APPROVAL OF MINUTES

August 2, 2022 – Regular Session - On motion made by Ms. Mastrangelo and seconded by Mr. Crane, all eligible in favor and carried, the minutes were adopted as amended. (Ineligible: Ladyzinski, McNally, Manduke, Seville)

Mr. Crane recused himself from the following proceedings and left the room.

HEARING – MODIFICATION OF CONDITION (continued from 06/21/2022)

Bernards Plaza Associates LLC; Block 8501, Lots 39.01 & 43; 403 King George Road; Extension of Time to Obtain Permanent Certificates of Occupancy; PB18-005A

Mr. Drill advised that during the 06/21/2022 meeting, the Board had granted the Applicant's request for a modification of Condition #17 of the Resolution memorialized on 05/21/2019 granting preliminary and final site plan approval for an inclusionary residential development at the Dewy Meadow Shopping Center. The modification granted allowed more time (to 12/31/2022) for the Applicant to obtain permanent Certificates of Occupancy for both Buildings A and B. Prior to the memorialization of the resolution granting the extension, the Applicant requested a further extension for Building A (to 03/31/2022) citing Covid-19 shutdowns, supply chain shortages and other conditions outside the Applicant's control.

After a discussion regarding the requested extensions, a straw poll indicated that the Board believed that the deadlines should be further extended to June 30, 2023.

The hearing was opened to the public for comment. Hearing none, that portion of the hearing was closed.

After deliberations, Ms. Mastrangelo moved to grant approval to modify the Condition #17 of the 2019 Resolution to extend the time to obtain Certificates of Approval for both Building A and Building B to June 30, 2023. Mr. Seville seconded.

Roll Call: Aye: Baumann, Ladyzinski, McNally, Mallach, Manduke, Mastrangelo, Piedici, Seville
Nay: NONE

Motion carried.

APPROVAL OF RESOLUTIONS

[Bernards Plaza Associates LLC](#); Block 8501, Lots 39.01 & 43; 403 King George Road; PB18-005A (approved) Mr. Seville moved to adopt the resolution (as amended) memorializing the Board's actions to grant an extension of time to obtain Certificates of Occupancy to 06/30/2023 for both Buildings A and B. Ms. Manduke seconded.

Roll Call: Aye: Baumann, Ladyzinski, McNally, Mallach, Manduke, Mastrangelo, Piedici, Seville
Nay: NONE

Motion carried.

[Bernards Plaza Associates LLC](#); Block 8501, Lots 39.01 & 43; 403 King George Road; PB20-003A (approved) Ms. Manduke moved to adopt the resolution memorializing the Board's actions to grant an extension of time to revise the plans and to obtain signatures to 10/19/2022. Mr. Seville seconded.

Roll Call: Aye: Baumann, Ladyzinski, McNally, Mallach, Manduke, Mastrangelo, Piedici, Seville
Nay: NONE

Motion carried.

Mr. Crane returned to the dais.

MASTER PLAN REVIEW – Final Drafts: Chapter XIII Green Buildings and Environmental Sustainability Plan Element and Chapter V Circulation Plan Element

After reviewing the documents, several members advised Mr. Banisch that they had additional comments. A discussion ensued regarding how to handle a subject that appears in two (2) different elements. Mr. Drill suggested that the subject should be cross-referenced rather than duplicated. The Board agreed.

The meeting was opened to the public for questions or comments. Todd Edelstein, 172 Riverside Drive, suggested several topics for the Master Plan. Chairwoman Piedici thanked Mr. Edelstein for his dedication in attending the meetings and for providing informative comments. That portion of the meeting was then closed.

Chairwoman Piedici advised the Board that at the 09/20/2022 meeting, the Board would check all the elements which had been reviewed to date for consistency.

COMMENTS FROM MEMBERS OR STAFF – Chairwoman Piedici cancelled the meeting scheduled for 09/06/2022.

EXECUTIVE SESSIONS

On motion made by Ms. Mastrangelo and seconded by Ms. Manduke, all in favor and carried, the Open Session of the meeting was recessed at 8:47 PM for the purpose of conducting two (2) executive sessions: (1) discussion of matters of attorney-client privilege and attorney-client advice where confidentiality is required for the Board Attorney to exercise his duties as an attorney specifically rendering legal advice pertaining to litigation and (2) discussion of matters involving employment of personnel.

ADJOURN

On motion made by Ms. Mastrangelo, seconded by Deputy Mayor McNally, all in favor and carried, the Executive Session of the meeting was closed, the Open Session was reconvened and adjourned at 9:43 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Planning Board

08/23/2022 kpjd

Approved as drafted 10/04/2022

BERNARDS TOWNSHIP PLANNING BOARD

BERNARDS PLAZA ASSOCIATES, LLC

**BLOCK 8501, LOTS 39.01 & 43 (F/K/A LOTS 39, 43 AND 44)
403 KING GEORGE ROAD**

APPLICATION #PB18-005A

RESOLUTION MEMORIALIZING THE MODIFICATION TO CONDITION OF PRIOR APPROVALS TO ALLOW EXTENSION OF TIME PERIOD TO OBTAIN PERMANENT CERTIFICATES OF OCCUPANCIES FOR BUILDINGS “A” AND “B”

WHEREAS, Bernards Plaza Associates, LLC (the “**applicant**”) owns an approximately 23-acre parcel located at 403 King George Road in the Township of Bernards (the “**Township**”), which is designated on the Township tax maps as Block 8501, Lots 39.01 & 43 (f/k/a Lots 39, 43 & 44) (the “**property**”);¹

WHEREAS, the property is situated in the B-5 Village Center zoning district (“**B-5 zone**”) and contained the Dewy Meadow Shopping Center, a daycare center, and a walking path for use by the residents and the public;

WHEREAS, the applicant applied for and obtained from the Bernards Township Planning Board (the “**Board**”) certain approvals including preliminary and final major site plan approval with c(2) signage variances, site plan ordinance exceptions, and RSIS exception, (the “**prior approvals**”) to allow removal/demolition of the existing commercial buildings and related improvements on the property and the construction of two multifamily residential rental apartment buildings to include a total of 198 units, including 30 affordable units, along with related infrastructure including for proposed apartment Building “A” (108 apartments), 137 parking spaces, a clubhouse, leasing and community center, lobby and utility rooms, and for proposed apartment Building “B” (90) apartments, 116 parking spaces, a lobby and utility rooms (the “**proposed development**”), as memorialized in a resolution adopted by the Board on May 21, 2019 for application #PB18-005 (the “**Resolution**”);

WHEREAS, the Resolution was subject to a number of conditions, including Condition #17, which provides in relevant part as follows:

17. Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy. The applicant shall apply for and obtain a

¹ A deed of consolidation merging former Lots 39 and 44 to create new Lot 39.01 was recorded on June 17, 2022. The merger of the two lots was a condition of the Board’s memorializing resolution adopted on October 19, 2021 which approved application #PB-20-003 which allows construction of a walking path on Lot 39.01 (f/k/a Lot 44). The application for site plan approval to allow the construction of the walking path was a condition of the Board’s memorializing resolution adopted on May 21, 2019 which approved application #PB-18-005 to construct two multifamily residential rental apartment buildings on Lot 39.01 (f/k/a Lot 39).

construction permit by May 21, 2021, which is within two years of the adoption of the Board's resolution on May 21, 2019. If during said two-year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The applicant shall also have two years from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said two-year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall automatically expire and become null and void.

WHEREAS, the 198 residential multi-family units, including 30 affordable housing units, located within the two buildings are currently under construction and the applicant applied to the Board by letter from its attorney dated June 16, 2022 seeking a modification to Condition #17 of the Resolution to extend the time period within which the applicant can obtain a permanent certificate of occupancy from two years from the issuance of construction permit (which is October 23, 2021 for Building B and August 6, 2022 for Building A) to December 31, 2022 for both Building A and Building B (the “**application**”);

WHEREAS, by subsequent letter dated July 26, 2022, the Applicant, through its attorney, requested an additional three-month extension for Building A, to allow the applicant to obtain a permanent certificate of occupancy to March 31, 2023 for Building A, and the Board deems the July 26, 2022 request to be an amendment to the application which can be addressed in one resolution memorializing the Board’s action on both the initial requests set forth in the June 16, 2022 letter and the amended request set forth in the July 26, 2022 letter;

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-50 (as to the final site plan aspect of the prior approvals) and N.J.S.A. 40:55D-51 and -60a (as to the “c” variance and exception aspects of the prior approvals), as well as Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982) (holding that modification of a condition imposed by a land use board should generally be heard by the board that imposed the condition);

WHEREAS, the Board considered the application at a duly noticed public hearing on June 21, 2022, during which hearing the applicant was represented by Danielle N. Kinback, Esq. (of Bisgaier Hoff, LLC) and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC) and the Board considered the applicant’s July 26, 2022 letter request at the August 16, 2022 hearing;²

² Notice was not 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.

WHEREAS, AFTER CONSIDERING THE PRIOR APPROVALS AS WELL AS THE REASONS PROVIDED IN SUPPORT OF THE 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 Application.** As set forth above, the application seeks the modification of condition #17 of the Resolution to allow for an extension of the time period within which the applicant has to obtain permanent certificates of occupancy from October 23, 2021 for Building B and August 6, 2022 for Building A to December 31, 2022 for Building B and March 31, 2023 for Building A.

2. **Standards for Considering the Request for Modification of Condition #17 of the Resolution.** Our courts have held that a land use 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), certif. 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 Cohen court 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. 85 N.J. Super. at 237-238. 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 #17 of the Resolution.** Turning to the issue of whether or not to modify Condition #17, 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 and the intent of the approval, but that COVID-19 shutdowns, supply chain shortages, and other circumstances outside the control of the applicant have necessitated additional time to complete construction and obtain permanent certificates of occupancy. The applicant has no intent to abandon the project and has diligently pursued construction. As such, the applicant is in need of additional time to obtain permanent certificates of occupancy. As such, the Board finds that allowing the applicant additional time to complete construction and obtain permanent certificates of occupancy would be beneficial. The Board finds that no negative impacts will result from modifying Condition #17 as proposed because the request is to allow the applicant time to complete construction and meet the intent of the Resolution. 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 extensions requested. That said, the Board believes that the applicant may actually need more time to obtain permanent certificates of occupancy for both Building B and Building A. As such, the Board believes that the time within which to obtain permanent certificates of occupancy for both buildings should be extended to June 30, 2023.

NOW, THEREFORE, BE IT RESOLVED BY THE BERNARDS TOWNSHIP PLANNING BOARD, BY MOTIONS DULY MADE AND SECONDED ON JUNE 21, 2022 AND AUGUST 16, 2022, AS FOLLOWS:

1. **Modification of Condition #17 of the Resolution.** Subject to the conditions set forth below, Condition #17 of the Resolution is modified to extend the time period within which the applicant has to obtain permanent certificates of occupancy from October 23, 2021 for Building B and August 6, 2022 for Building A to June 30, 2023 for Building B and to June 30, 2023 for Building A.

B. CONDITIONS

1. **Condition # 17 of the Resolution Revised.** The relevant portion of condition # 17 of the Resolution is hereby revised to provide as follows:

17. **Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy.** The applicant shall have until June 30, 2023 to obtain permanent certificates of occupancy for Building B and until June 30, 2023 to obtain permanent certificates of occupancy for Building A. If permanent certificates of occupancy are not obtained by the above dates, or extension thereof as granted by the Board, the underlying approvals shall automatically expire and become null and void.

2. **Subject to all Conditions of Prior approvals which have not been modified herein.** All conditions of the prior approvals not specifically eliminated or modified in the within resolution shall remain in full force and effect.

3. **Subject to Other Approvals and Laws.** The prior approvals 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 prior approvals 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 prior approvals and any approval(s) required above, the terms and/or conditions of the prior approvals shall prevail unless and until changed by the Board upon proper application.

VOTE ON MOTION DULY MADE AND SECONDED ON JUNE 21, 2022:

THOSE IN FAVOR: DAMURJIAN, EORIO, LADYZINSKI, MCNALLY, MALLACH, MANDUKE, MASTRANGELO, PIEDICI, & SEVILLE

THOSE OPPOSED: NONE.

VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 16, 2022:

THOSE IN FAVOR: LADYZINSKI, MCNALLY, MALLACH, MANDUKE, MASTRANGELO, PIEDICI, & SEVILLE.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on August 16, 2022 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
DAMURJIAN				X
EORIO				X
LADYZINSKI	X			
MCNALLY	X			
MALLACH	X			
MANDUKE	X			
MASTRANGELO	X			
PIEDICI	X			
SEVILLE	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 August 16, 2022.

Cyndi Kiefer

CYNDI KIEFER, Board Secretary

BERNARDS TOWNSHIP PLANNING BOARD

BERNARDS PLAZA ASSOCIATES, LLC

**BLOCK 8501, LOTS 39.01 & 43 (F/K/A LOTS 39, 43 AND 44)
403 KING GEORGE ROAD**

APPLICATION #PB20-003A

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

WHEREAS, Bernards Plaza Associates, LLC (the “**applicant**”) owns an approximately 23-acre parcel located at 403 King George Road in the Township of Bernards (the “**Township**”), which is designated on the Township tax maps as Block 8501, Lots 39.01 & 43 (f/k/a Lots 39, 43 & 44) (the “**property**”);¹

WHEREAS, the property is situated in the B-5 Village Center zoning district (“**B-5 zone**”) and contained the Dewy Meadow Shopping Center, a daycare center, and a walking path for use by the residents and the public;

WHEREAS, the applicant applied for and obtained from the Bernards Township Planning Board (the “**Board**”) certain approvals including preliminary and final major site plan approval (the “**prior approvals**”) to allow construction of a permitted recreational facility, specifically, an approximately 1,000-foot-long oval-shaped, mulch walking path on Lot 39.01 (f/k/a Lot 44), along with four benches distributed around the oval (the “**recreational improvements**”), as memorialized in a resolution adopted by the Board on October 19, 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 Site Plans.** Revisions to the site plans shall be made by notes and/or drawings to the satisfaction of the Township Planner and Board engineering expert by April 19, 2022 (which is within six (6) months of the adoption of the within resolution on October 19, 2021) to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and/or as discussed by the Board on the record during the hearing on the application provided below. In the event that the applicant fails to make the revisions as

¹ A deed of consolidation merging former Lots 39 and 44 to create new Lot 39.01 was recorded on June 17, 2022. The merger of the two lots was a condition of the Board’s memorializing resolution adopted on October 19, 2021 which approved application #PB-20-003 which allows construction of a walking path on Lot 39.01 (f/k/a Lot 44).

required and/or fails to obtain signatures on the site plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void.

WHEREAS, the applicant applied to the Board by letter from its attorney dated June 6, 2022 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 April 19, 2022 to October 19, 2022 (the “**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-50 (as to the final site plan aspect of the prior approvals) as well as Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982) (holding that modification of a condition imposed by a land use board should generally be heard by the board that imposed the condition);

WHEREAS, the Board considered the application at a duly noticed public hearing² on June 21, 2022, during which hearing the applicant was represented by Danielle N. Kinback, Esq. (of Bisgaier Hoff, LLC) 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 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 Application.** As set forth above, the application seeks the 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 April 19, 2022 to October 19, 2022.

2. **Standards for Considering the Request for Modification of Condition #1 of the Resolution.** Our courts have held that a land use board has the power to modify

² No 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.

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 Cohen court 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. 85 N.J. Super. at 237-238. 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 and meet the intent of the approval, but that certain 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 requested.

NOW, THEREFORE, BE IT RESOLVED BY THE BERNARDS TOWNSHIP PLANNING BOARD, BY MOTION DULY MADE AND SECONDED ON JUNE 21, 2022, AS FOLLOWS:

1. **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 revise the plans and obtain signatures thereon from April 19, 2022 to October 19, 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 Site Plans.** Revisions to the site plans shall be made by notes and/or drawings to the satisfaction of the Township Planner and Board engineering expert to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and/or as discussed by the Board on the record during the hearing on the application provided below and the site plans being signed no later than October 19, 2022, and only after the revisions have been made to all of the documents. In the event that the applicant fails to make the revisions as required and/or fails to obtain signatures on the site plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void.

2. **Subject to all Conditions of Prior Approvals which have not been modified herein.** All conditions of the prior approvals not specifically eliminated or modified in the within resolution shall remain in full force and effect.

3. **Subject to Other Approvals and Laws.** The prior approvals 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 prior approvals 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 prior approvals and any approval(s) required above, the terms and/or conditions of the prior approvals shall prevail unless and until changed by the Board upon proper application.

VOTE ON MOTION DULY MADE AND SECONDED ON JUNE 21, 2022:

THOSE IN FAVOR: DAMURJIAN, EORIO, LADYZINSKI, MCNALLY, MALLACH, MANDUKE, MASTRANGELO, PIEDICI, & SEVILLE

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on August 16, 2022 by the following vote of

eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
DAMURJIAN				X
EORIO				X
LADYZINSKI	X			
MCNALLY	X			
MALLACH	X			
MANDUKE	X			
MASTRANGELO	X			
PIEDICI	X			
SEVILLE	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 August 16, 2022.

Cyndi Kiefer

CYNDI KIEFER, Board Secretary