

# **TOWNSHIP OF BERNARDS**

## **PLANNING BOARD**

### **MINUTES <sup>v3</sup>**

#### **REGULAR SESSION**

February 21, 2023

Chairwoman Piedici called the reorganization meeting to order at 7:35 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 18, 2023 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, Cuozzo, Damurjian, Eorio, Ladyzinski, Manduke, Mastrangelo, Piedici, Seville  
Members Absent: Baldassare  
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Township Planner, David Schley, PP, AICP; Board Planner, David Banisch, PP, AICP (7:48 PM); Board Secretary, Cyndi Kiefer; Bryce D. Good, PE, CPESC

Moved by Mr. Baumann, seconded by Ms. Manduke, all eligible in favor and carried, the absence of Committeeman Baldassare was excused.

Moved by Ms. Mastrangelo, seconded by Mr. Damurjian, all eligible in favor and carried, the absences of Mr. Eorio and Ms. Manduke (01/17/2023) were excused.

Bryce D. Good, PP, CPESC, applicant for the position of Board Engineer, left the room.

**EXECUTIVE SESSION #1 – Professional Contracts** – Formal action may be taken upon return to Open Session. Moved by Ms. Mastrangelo, seconded by Ms. Manduke, all eligible in favor and carried, the Board closed the regular session of the meeting and retired to an executive session at 7:38 PM.

\* \* \* \* \*

Moved by Ms. Mastrangelo, seconded by Mr. Crane, all eligible in favor and carried, the Board closed the executive session of the meeting and re-opened the regular session at 7:58 PM.

Mr. Banisch arrived at 7:48 PM.

Mr. Good re-entered the room.

#### **APPOINTMENT OF BOARD ENGINEER – Resolution #23-06**

Chairwoman Piedici read the resolution in its entirety into the record.

Motion by Mr. Baumann that Bryce D. Good, PE, CPSEC, be appointed as Board Engineer for the year 2023 and that Resolution #23-06 be adopted as written. Mr. Seville seconded the motion.

Roll Call:	Aye:	Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo, Piedici, Seville
	Nay:	NONE
	Ineligible:	Ladyzinski

Motion carried.

### **APPROVAL OF MINUTES**

January 17, 2023 - Regular & Reorganization Sessions - On motion made by Mr. Damurjian and seconded by Mr. Crane, all eligible in favor and carried, the minutes were adopted as written. Ineligible: Eorio, Manduke

March 2, 2021 – Executive Session – On motion made by Mr. Baumann and seconded by Mr. Eorio, all eligible in favor and carried, the minutes were adopted as written. Ineligible: Crane, Cuzzo, Damurjian, Ladyzinski, Seville

### **APPROVAL OF RESOLUTIONS**

Ahmed/Faizan/Kirkwood; Block 2301, Lots 4 & 5; 48 & 62 Wisteria Way; PB21-005 (denied) - Ms. Mastrangelo moved to adopt the resolution as written. Mr. Damurjian seconded.

Roll Call:	Aye:	Damurjian, Eorio, Mastrangelo, Piedici
	Nay:	NONE
	Ineligible:	Baumann, Crane, Cuzzo, Ladyzinski, Manduke, Seville

Motion carried.

Fenwick Basking Ridge Homeowners' Association Inc.; Block 7702, Lots 10.01 through 10.05; 3, 6, 7, 10 & 11 Fenwick Place; PB22-002 (approved) – Mr. Crane moved to adopt the resolution as written. Mr. Baumann seconded.

Roll Call:	Aye:	Baumann, Crane, Damurjian, Eorio, Mastrangelo, Piedici
	Nay:	NONE
	Ineligible:	Cuzzo, Ladyzinski, Manduke, Seville

Motion carried.

Orthmann, James & Kyung-Mi; Block 9601, Lot 4.03; 49 Liberty Corner Road; PB22-004 (approved) – Mr. Damurjian moved to adopt the resolution as written. Mr. Seville seconded.

Roll Call:	Aye:	Baumann, Crane, Damurjian, Eorio, Ladyzinski, Mastrangelo, Piedici Seville
	Nay:	NONE
	Ineligible:	Cuzzo, Manduke

Motion carried.

### **COMPLETENESS HEARING**

Fellowship Village Inc.; Block 9301 Lot 33, Block 9401 Lot 9; 33 & 55 Allen Road; Conditional Use, Preliminary/Final Site Plan; PB22-005 - Referring to his memo (02/14/2023), Mr. Schley stated that the subject application was reviewed for completeness pursuant to Section 21-51 and all applicable items not previously waived by the Board had been submitted. Moved by Mr. Crane, seconded by Mr. Seville, that the application be deemed complete.

Roll Call:	Aye:	Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo, Piedici, Seville
	Nay:	NONE
	Ineligible:	Ladyzinski

Motion carried.

**MASTER PLAN REVIEW** – Climate Change Related Hazard Vulnerability Assessment NJSA 40:55D-28b(2)(h) section of the Land Use Element – First Draft

Referring to his memo (11/29/2022) about the Climate Change-Related Hazard Vulnerability Assessment, Mr. Banisch stated that this required addition to the Land Use Plan Element is a result of the negative impact climate change has had on all communities in the State. The specific items that must be included in the assessment are listed in Section NJSA 40:55D-28(h) of the Municipal Land Use Law and every municipality must review its existing emergency response policies for each hazard listed.

The Board reviewed the draft and submitted comments/revisions for incorporation in the final draft. Mr. Banisch agreed to investigate how many electric vehicle charging stations there are in the Township. He also stated that he would solicit input from JCPL (tree maintenance) and from the Office of Emergency Management. Mr. Baumann suggested that in an attempt to limit the damage to electrical wires caused by trees, the Board should review all pertinent ordinances. Mr. Seville proposed that programs such as Blue Acres (State loan program for funds to acquire properties that are in flood prone areas) be included.

Mr. Banisch advised the Board that revisions to the Residential Site Improvement Standards (RSIS) which would limit a municipality's ability to regulate stormwater management are being considered and he encouraged the Board to consider adopting a resolution objecting to these changes.

#### **APPOINTMENT OF A LANDSCAPE/LIGHTING COMMITTEE**

Islamic Society of Basking Ridge Inc.; Block 9301, Lot 2; 124 Church Street; PB12-001A – Mr. Damurjian, Mr. Ladyzinski and Mr. Seville volunteered to serve on the committee.

**EXECUTIVE SESSION** – Review of closed session minutes. Formal action may be taken upon the return to open session – Moved by Mr. Crane, seconded by Mr. Seville, that the Board close the regular session of the meeting and retire to an executive session at 9:10 PM.

Roll Call:	Aye:	Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo, Piedici, Seville
	Nay:	NONE
	Ineligible:	Ladyzinski

Motion carried.

\* \* \* \* \*

Moved by Mr. Crane, seconded by Ms. Mastrangelo, all eligible in favor and carried, the Board closed the executive session of the meeting and re-opened the regular session at 9:31 PM.

**RESOLUTION AUTHORIZING RELEASE OF CERTAIN CLOSED SESSION MINUTES** – Moved by Ms. Manduke, seconded by Mr. Crane, that minutes from certain closed sessions should be disclosed to the public at this time because there is no longer a need to keep them confidential.

Roll Call:	Aye:	Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo, Piedici, Seville
	Nay:	NONE
	Ineligible:	Ladyzinski

Motion carried.

#### **LANDSCAPING/LIGHTING COMMITTEE REPORT**

Bernards Plaza Associates LLC; Block 8501, Lot 39.01; 403 King George Road; PB18-005 - Mr. Damurjian stated that in the initial 01/17/2023 report, the committee stated that the site was well lit and that there was no intrusion of light to other properties however, they had failed to view the subject property from the adjacent property, Crown Court. He added that he and Chairwoman Piedici observed several deficiencies in the vegetative buffer between Crown Court and the subject project during a subsequent night visit and noted that evergreen plantings are needed to block the light pollution from the northern building of the Dewy Meadow complex. The committee also commented on light emanating from the parking garage on the subject property and suggested that additional measures should be taken to mitigate that light pollution and improve the overall exterior design of the parking garage.

**LANDSCAPING COMMITTEE REPORT**

Fellowship Village Inc.; Block 9301, Lot 33; 8000 Fellowship Road; PB13-006 – Mr. Damurjian advised the Board that he, Ms. Manduke and Mr. Crane had conducted a site visit on 01/23/2023, adding that Ellen Pinson, owner of adjacent property, 99 Allen Road, was also present. The committee noted that the fencing between the subject property and Mrs. Pinson's property was deficient in length. There were also gaps between the ground and the bottom of the fence which allow headlights to shine onto the Pinson property. Some of the required plantings were missing or in the wrong location and when viewed from the Pinson property, there are huge gaps in the vegetative buffering.

**COMMENTS FROM MEMBERS OR STAFF**

Chairwoman Piedici announced the cancellation of the March 7, 2023 meeting.

**ADJOURN**

Moved by Ms. Manduke, seconded by Mr. Seville, all eligible in favor and carried, the meeting was adjourned at 9:51 PM.

Respectfully submitted,

*Cyndi Kiefer*

Cyndi Kiefer, Secretary  
Planning Board

*Approved as drafted 04/04/2023.*

03/21/2023 dsjdkp

**BERNARDS TOWNSHIP PLANNING BOARD**

**RESOLUTION AUTHORIZING CLOSED SESSION**

**WHEREAS,** N.J.S.A. 10:4-12 (the Open Public Meeting Act) authorizes this Board to exclude the public from that portion of a meeting at which this Board discusses certain matters:

**WHEREAS,** the Board is about to discuss such matters, specifically, matters involving the employment and terms and conditions of employment of professionals appointed by the Board;

**WHEREAS,** this Board believes the public should be excluded from those discussions;

**NOW, THEREFORE,** be it resolved by the Bernards Township Planning Board on February 21, 2023 that the Board now go into closed session and the public be excluded and that the Board believes that the discussions conducted in the closed session should be disclosed to the public after the Board takes formal action when it returns to open session and the minutes of the open session should include the matters discussed in closed session.

The above Resolution was adopted on February 21, 2023, by the following vote of the members of the Board:

AYES:           Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo,  
                    Piedici, Seville

NAYES:         NONE

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 February 21, 2023.

*Cyndi Kiefer*

---

**CYNDI KIEFER, Board Secretary**



# Resolution of the Township of Bernards Planning Board

277 S. Maple Ave, Basking Ridge, NJ 07920  
908-204-3026; [www.bernards.org](http://www.bernards.org)

---

## **Resolution #23-06**

Professional Services Contract for February 21, 2023 through December 31, 2023  
Planning Board Engineer Awarded to Bryce D. Good, PE, CPESC,  
NJ License #24GE05384300,  
of the firm Finelli Consulting Engineers, Inc.  
In the Not to Exceed Amount of \$5,000.00  
(Excluding Charges covered by Escrow Funds)

**BE IT RESOLVED**, by the Bernards Township Planning Board (herein "Board"), Somerset County, New Jersey, as follows:

**WHEREAS**, the Bernards Township Planning Board wishes to engage the services of an engineer to perform professional engineering services as required for the period February 21, 2023 through December 31, 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**, the Bernards Township Planning Board has determined that Bryce D. Good, PE, CPESC, NJ License #24GE05384300 of the firm Finelli Consulting Engineers Inc. by reason of the special knowledge and experience demonstrated 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 Professional Engineering Services of the Planning Board Other Expenses, account #3-01-21-180-204 for a not to exceed amount of \$5,000.00.

**NOW BE IT RESOLVED** by the Bernards Township Planning Board that a professional service contract awarded to Bryce D. Good, PE, CPESC, NJ License #24GE05384300 of the firm Finelli Consulting Engineers Inc. as follows:

1. The contract will encompass services as outlined in the submitted contract proposal dated January 4, 2023 appended to this resolution.
2. The contract term is from February 21, 2023 through December 31, 2023 at the hourly rate of \$140.00 for primary engineer, Bryce D. Good, PE, CPESC, NJ License #24GE05384300 and \$160.00 for alternate engineer, Michael S. Finelli, PE, PP, CME, NJ License #24GE03239600 at a not to exceed amount of \$5,000.00, plus escrow funds paid by applicants in accordance with Bernards Township Ordinance No.1018.
3. The line item appropriation for professional engineering services of \$5,000.00 shall be charged to line account #3-01-21-180-204.
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 Planning Board engage Bryce D. Good, PE, CPESC, NJ License #24GE05384300 of the firm Finelli Consulting Engineers Inc., as its board engineer for the period February 21, 2023 through December 31, 2023, designated as the individual specifically authorized to act in the Board's behalf or any other engineer of 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 Bryce D. Good, PE, CPESC, NJ License #24GE05384300 of the firm Finelli Consulting Engineers Inc which contract [*appended to this resolution*] shall be available for inspection at the Bernards Township Planning Board Offices during regular business hours.

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.



Bryce D. Good, PE, CPESC,  
NJ License #24GE05384300

**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 appropriation to be charged for Professional Engineering Services is Planning Board Other Expenses, Fees and Compensation line account #3-01-21-180-204 in the not to exceed amount of \$5,000.00.

Date: February 15, 2023




Sean McCarthy, Chief Financial Officer

**PURCHASING CERTIFICATION**

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

Date: February 13, 2023



Francis J. Decibus, QPA, RPPO  
Purchasing Agent

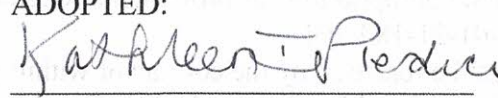
Dated: February 21, 2023

ATTEST:



Cyndi Kiefer, Board Secretary

ADOPTED:



Kathleen I. Piedici, Chairwoman

**BERNARDS TOWNSHIP PLANNING BOARD**

**FAIZAN AHMED/ANILA FAIZAN/KEVIN KIRKWOOD  
62/48 WISTERIA WAY  
BLOCK 2301, LOTS 4 AND 5**

**APPLICATION #PB21-005**

**RESOLUTION MEMORIALIZING (1) DENIAL OF THE APPLICATION TO  
ELIMINATE SUBDIVISION APPROVAL CONDITION REQUIRING THAT THE  
APPLICANTS MAINTAIN AN EMERGENCY ACCESS ROAD OVER AN  
EMERGENCY ACCESS EASEMENT AND (2) DENIAL OF THE REQUEST TO  
RECOMMEND TO THE TOWNSHIP COMMITTEE THAT THE EMERGENCY  
ACCESS EASEMENT BE VACATED**

**WHEREAS**, Faizan Ahmed and Anila Faizan own property in the Township of Bernards (the “**Township**”) designated on the Township tax map as Lot 5 in Block 2301, located at 62 Wisteria Way, and Kevin and Nathalie Kirkwood own property designated on the Township tax map as Lot 4 in Block 2301, located at 48 Wisteria Way, which lots abut one another and are two of 11 lots in a subdivision development previously known as the “Pheasant Cross subdivision” and now known as the “Wisteria Way subdivision” (the subdivision development is referred to herein as the “**subdivision**”) (the two lots together are referred to as the “**property**”);

**WHEREAS**, an emergency access easement (the “**access easement**”) with a paved surface used as an emergency access road (the “**access road**”) owned by the Township exists on the property to serve some of the homes in the subdivision in the event of emergencies where Wisteria Way becomes blocked to emergency vehicles;

**WHEREAS**, the applicants made application (the “**application**”) to the Bernards Township Planning Board (the “**Board**”) to eliminate a condition imposed by the Board on the approval of the subdivision, which condition required the establishment of the access easement, and required maintenance of the access road located on the access easement, which access easement and access road passes through the rear of the property, and the application also requests that the Board recommend to the Township Committee that the access easement be vacated;

**WHEREAS**, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-48 and -50, by virtue of Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982); Park Center v. Woodbridge Zoning Board of Adj., 365 N.J. Super. 284, 291 (App. Div. 2004), both of which hold that modification of condition(s) imposed by a land use board should generally be heard by the board that imposed the condition(s);

**WHEREAS**, the Board considered the application at a duly noticed public hearing which commenced on April 5, 2022, was carried to and continued on May 3, 2022, and was further carried to and completed on June 7, 2022, with proof of service and proof of publication of



notices of the hearing being on file with the Board so that the Board has procedural jurisdiction over the application, during which hearing the applicants represented themselves, pro se, and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS**, the following individuals testified during the hearing, were subject to cross examination / questioning, and their testimony is part of the record in this matter;

1. Faizan Ahmed (Co-applicant),
2. Anila Faizan (Co-applicant),
3. Kevin Kirkwood (Co-applicant),
4. Frank D'Amore (Township Fire Official),
5. Peter von der Linde (Fire Chief, Basking Ridge Fire Company),
6. David Banisch, PP, AICP (Board planning expert),
7. David Schley, PP, AICP (Township Planner),
8. Michael Shapiro (Interested party, neighbor), and
9. Sunil Gangwani (Interested party, neighbor);

**WHEREAS**, letters signed from all Wisteria Way residents consenting to the vacating of the easement were entered into evidence during the June 7, 2022 hearing as a package as exhibit A-1, are on file with the Board, and are part of the record in this matter;

**WHEREAS, AFTER CONSIDERING THE PRIOR APPROVALS AS WELL AS THE TESTIMONY AND EXHIBIT REFERENCED ABOVE, 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 DENYING THE APPLICATION:**

**A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS**

1. **The Subdivision, Prior Approvals, Condition at Issue, and the Recorded Easement.** On January 30, 2001, the Board adopted a resolution memorializing its grant of preliminary major subdivision approval to the Estate of Margaret Durkin to allow the creation of the subdivision. Condition #16 of the January 30, 2001 resolution provides: "The applicant shall use diligent and best efforts to determine whether it is feasible to bring an emergency access roadway into the applicant's tract from the contiguous property to the east owned by Bernards Township." On July 11, 2001, the Board adopted a resolution memorializing the grant of amended preliminary subdivision approval which included the grant of relief from condition #16 of the prior resolution as the Board found that emergency access from the contiguous Township owned property was not feasible. Instead, the Board approved the emergency access road as exists today and paragraph #6 of the July 11, 2001 resolution states: "The emergency access roadway is gravel and will be twelve feet in width except where wider vehicle passing areas shall be provided as deemed necessary by the Township Fire Official." Further, paragraph #7 of the July 11, 2001 resolution states: "The responsibility for maintenance of the emergency [access road] shall be solely that of the owners of new Lots J [present day Lot 5] and K [present day Lot

4].” Condition #8 of the July 11, 2001 resolution states: “The applicant shall submit the proposed form of maintenance agreement for the emergency access roadway to be entered into by the property owners of [Lot 5 and Lot 4] for approval by the Township Attorney and Township Engineer, which agreement shall be memorialized in written form prior to the issuance of any building permits for any lot within the [subdivision].” On March 5, 2002, the Board adopted a resolution memorializing the grant of final subdivision approval. The easement and maintenance agreement were approved by the Township Attorney and Township Engineer and recorded and, thereafter, on June 25, 2002, the easement was conveyed to the Township. The access road was thereafter paved.

2. **The Application.** As set forth above, the application seeks the elimination of the condition requiring the applicants to maintain the access road over their lots. As also set forth above, the application further requests that the Board make a recommendation to the Township Committee that the easement be vacated altogether. The applicants argue that in its review of the underlying subdivision application in 2001, the Board applied both the cul-de-sac length limitation of 1,000 feet contained in Township ordinance section 21-36.1.c and the Residential Site Improvement Standards (“**RSIS**”) cul-de-sac limit set forth in N.J.A.C. 5:21-4.1(c), which is based on average daily traffic, in imposing the conditions requiring an access easement and for maintenance of the access drive. The applicants correctly note that, after the subdivision approvals were granted, the New Jersey Department of Community Affairs (“**DCA**”) issued RSIS Clarification #4 dated June 19, 2003 which provides that “any attempt by a municipality to impose a length limit [for a cul-de-sac] is in conflict with the RSIS” and any “(s)uch provisions have been superseded by the RSIS and are unenforceable.” The applicants argue that the issuance of RSIS Clarification #4 issued in 2003, after the subdivision approvals granted by the Board in 2001/2002, constitutes a change in circumstances which warrants the modification of the condition at issue to eliminate the obligation to maintain the access road.

3. **Standards for Considering Requests for Modification or Elimination of Conditions.** 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), 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 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 changed circumstances, our courts have held that a board should consider whether there have been changes in the neighborhood and, if so, the effect of those changes in terms of the condition under consideration. Russell v. Tenaflly Board of Adj., 31 N.J. 58, 66 (1959). The Board believes that changed circumstances can also be a change in the law. Regarding “good cause”, 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 to the Board at the time it was imposed. Id. One factor that should be considered in making this determination is the extent to which the condition was discussed by the Board at the time it was imposed. Id. at 421.

4. **The Standard for Modifying or Eliminating the Condition Has Not Been Met.** The Board notes and finds that the condition requiring the access easement, the access road, and individual lot owner's responsibility to maintain the access road was imposed to protect and promote the public health and safety of not only the residents of the Wisteria Way subdivision development but also of emergency responders, particularly fire fighters, who might need to use the access road in the event that access through Wisteria Way was blocked and/or fire hoses were laid out on Wisteria Way to fight a fire so could not be traveled over by firefighting equipment. In this regard, the conveyance of the easement to the Township of Bernards stipulates that "Grantor shall maintain the Easement Area in an unobstructed manner so as to preserve at all times, including during snow fall in winter, the right of the Grantee to utilize the Easement Area for the purposes set forth herein." Moreover, the conveyance gives the Township of Bernards the "right to enter upon the Easement Area during any and all emergency situations." The Board finds that the issuance of RSIS Clarification #4 is not a change in circumstances as the Board in its 2001/2002 subdivision approvals did not enforce the Township ordinance 1,000-foot length of cul-de-sac limitation. To the contrary, the Board granted an exception from the ordinance requirement to allow Wisteria Way to be 1,900 feet long. Further, the Board notes that the imposition of the conditions at issue were not imposed as part of the grant of the exception. The conditions were imposed under the authority of Pizzo Mantin Group v. Randolph, 137 N.J. 219, 232-233 (1994), which held that the Municipal Land Use Law ("MLUL"), specifically, N.J.S.A. 40:55D-49a, authorizes a planning board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to "layout and design standards for streets" and improvements for "public health and safety." Based on the testimony of Township Fire Official Frank D'Amore, the Board finds that nothing has changed regarding the need for the access road since the time that the condition was imposed in 2001 to the time of the hearing on the application and the Board credits his opinion that elimination of the access road would negatively impact public health and safety.

As Fire Chief von der Linde testified, in the event of a fire, Wisteria Way could potentially be blocked by fire hoses laid in the street, necessitating the use of the access road. Moreover, Chief von der Linde explained that in a case where emergency fire personnel would require a secondary water source, the closest alternative source is a pond located along the access road. Because the Board finds that nothing has materially changed with regard to the layout of the development or the ability of emergency personnel to gain access to the homes and the residents thereof in case of an emergency, the Board finds that there are no changed circumstances and that good cause does not exist to warrant the Board modifying or eliminating the condition requiring the access easement, the access road, and maintenance of the access road.

To the contrary, the Board finds that modifying the condition to eliminate the access road and/or maintenance of the access road would be inconsistent with the intent of the condition as such elimination would adversely impact public health and safety. Finally, enforcing the condition does not “frustrate an appropriate purpose.” Rather, the Board finds that the inherent safety of having alternate access to water, homes and, most importantly, the people not only residing in the subdivision but the emergency responders, is and continues to be an appropriate purpose. While the Board recognizes that maintaining the access road may be an inconvenience to the applicants, the Board notes and finds that they were well aware of such when they purchased their homes. The Board also recognizes that all of the residents of the Wisteria Way subdivision have indicated in writing that they do not object to the vacation of the access easement and, in fact, they have supported the application. However, the Board stresses that support of neighbors alone does not provide a legal reason for the Board to modify the condition to eliminate the maintenance obligation and/or recommend to the Township Committee that the access easement be vacated. Rather, there must be changed circumstance or just cause to do so and the Board is unable to find such here based on the submissions of the applicants so, therefore, must deny the application.<sup>1</sup>

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTIONS DULY MADE AND SECONDED ON JUNE 7, 2022 THAT THE APPLICATION IS DENIED IN THE FOLLOWING PARTICULARS:**

**B. DENIAL OF APPLICATION**

1. **Denial of Application to Modify Condition to Eliminate Obligation to Maintain Access Road.** Based on the foregoing, the Board hereby denies the application to modify the condition to eliminate the obligation to maintain the access road.

2. **Denial of Request to Recommend to the Township Committee that the Easement be Vacated.** Based on the forgoing, the Board hereby denies the applicants’ request that it recommend that the Township Committee vacate the access easement and, to the contrary, the Board recommends that the access easement remain in full force and effect.

\*\*\*\*\*

---

<sup>1</sup> The Board notes that the applicants never provided the Board with a good reason to modify the condition to eliminate the obligation to maintain the access easement. For example, Mr. Ahmed cited privacy issues with people walking on road, as well as the possibility of foundation damage to his house should emergency vehicles use the access road as it the access road to the rear of his home, aesthetics of having the access road in his rear yard, and the costs of maintaining the access passes close to his home, as to his reasons for bringing this application. The Board notes that Mr. Ahmed was aware of the obligation to maintain the access road when he purchased his lot and chose to construct a portion of his home extremely close to the access easement and access road at his own risk, so self-created the very issues he urges as reasons to modify the condition. Finally, the Board also notes that when asked whether he would physically remove the paved road over the easement area if the Board modified the condition to eliminate the maintenance obligation, Mr. Ahmed responded that he would not and, in fact, would use the paved surface as part of a squash court he would then construct.

\*\*\*\*\*

**AS THE VOTE ON A MOTION DULY MADE AND SECONDED ON JUNE 7, 2022 TO MODIFY THE CONDITION TO ELIMATE THE OBLIGATION TO MAINTAIN THE ACCESS ROAD FAILED TO GARNER A MAJORITY OF PLANNING BOARD MEMBERS' VOTES, THE MOTION FAILS AND THE APPLICATION IS DENIED IN ACCORDANCE WITH N.J.S.A. 40:55D-9a.**

**THOSE IN FAVOR OF MODIFYING THE CONDITION TO ELIMINATE THE OBLIGATION TO MAINTAIN THE ACCESS ROAD: BAUMANN, MALLACH, MANDUKE, SEVILLE.**

**THOSE OPPOSED TO MODIFYING THE CONDITION TO ELIMINATE THE OBLIGATION TO MAINTAIN THE ACCESS ROAD: DAMURJIAN, EORIO, MASTRANGELO, PIEDICI.**

\*\*\*\*\*

The above memorializing resolution was adopted by motion duly made and seconded on February 21, 2023 by the following vote of Board members who voted against the motion to approve the application in accordance with N.J.S.A. 40:55D-10g(2):

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Damurjian	X			
Eorio	X			
Mastrangelo	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 approval resolution duly adopted by the said Planning Board on February 21, 2023.

*Cyndi Kiefer*

---

**CYNDI KIEFER, Board Secretary**



**BERNARDS TOWNSHIP PLANNING BOARD**

**FENWICK BASKING RIDGE HOMEOWNERS' ASSOCIATION, INC.**

**3/6/7/10/11 FENWICK PLACE**

**BLOCK 7702, LOTS 10.01 TO 10.05**

**APPLICATION #PB-22-002**

**RESOLUTION MEMORIALIZING (1) THE APPROVAL OF THE REQUEST FOR THE MODIFICATION OF A CONDITION IMPOSED BY A PRIOR RESOLUTION OF APPROVAL TO SUBDIVIDE BLOCK 7702, LOTS 10 AND 11 (NOW DESIGNATED AS BLOCK 7702, LOTS 10.01-10.05) AND DISALLOWING STRUCTURES SUCH AS FENCES AND IRRIGATION SYSTEMS WITHIN A TREE PRESERVATION/BUFFER EASEMENT AND (2) RECOMMENDATION TO THE TOWNSHIP COMMITTEE TO CONSENT TO THE MODIFICATION OF THE EASEMENT**

**WHEREAS**, Fenwick Basking Ridge Homeowners Association, Inc. (the “applicant”) represents the owners of lots 10.01 through 10.05 in Block 7702 (the “**5 lots**”), Leonard and Alexis Soled, Fenwick Valley Road, LLC, Brian and Brooke Krawitz, Waqas and Urooj Rehman, and Guarav Patel and Payal Joshi (the “**lot owners**”);

**WHEREAS**, the Board granted preliminary subdivision approval with “c” variances and exceptions to allow Christopher Bell and CC Edwards Developers, LLC (“**Bell and Edwards**”) to subdivide Block 7702, Lots 10 and 11 into the 5 lots (the “**subdivision**”) as memorialized in a resolution adopted on September 20, 2016 (the “**2016 approvals**”);

**WHEREAS**, condition 11.b of the 2016 approvals required a “(t)ree preservation/buffer easement which shall allow for initial planting of additional trees and landscaping within the easement area and maintenance and replanting of any dead or dying landscaping but which shall prohibit otherwise removing or cutting or trimming landscaping, and shall prohibit structures, including but not limited to fences and irrigation systems”;

**WHEREAS**, the Board granted final subdivision approval to Bell and Edwards allow the recording of the subdivision plat and/or subdivision deeds to create the subdivision as memorialized in a resolution adopted on January 16, 2018 (the “**2018 final approval**”) and the 2018 final approval was subject to conditions, one of which incorporated by reference the conditions of the 2016 approvals, which included condition 11.b of the 2016 approvals which required a “(t)ree preservation/buffer easement which shall allow for initial planting of additional trees and landscaping within the easement area and maintenance and replanting of any dead or dying landscaping but which shall prohibit otherwise removing or cutting or trimming landscaping, and shall prohibit structures, including but not limited to fences and irrigation systems”;

**WHEREAS**, the tree preservation / buffer easement (the “easement”) was recorded and runs along the rear of each of the 5 lots where those lots adjoin existing residential lots as a means of minimizing the impact of the development on the existing neighborhoods;

**WHEREAS**, the lot owners are required to perpetually maintain and replace, as necessary, all of the newly planted and pre-existing trees within the easement on each of the lot owner's respective lot;

**WHEREAS**, the applicant made application to the Bernards Township Planning Board (the "Board") on behalf of the lot owners to eliminate the condition prohibiting structures such as fences and irrigation systems within the easement at the rear of each of the 5 lots (the "application"), and

**WHEREAS**, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-48 and -50 and by virtue of Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982); Park Center v. Woodbridge Zoning Board of Adj., 365 N.J. Super. 284, 291 (App. Div. 2004), both of which stand for the proposition 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 August 2, 2022, with proof of service and proof of publication of notices of the hearing being on file with the Board so that the Board has procedural jurisdiction over the application, during which hearing the applicant was represented by Michael Silbert, Esq. (of DiFrancesco Bateman, Kunzman, Davis, Lehrer & Flaum PC), and the Board was represented by Joseph C. Tauriello, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS**, the following individuals testified during the hearing, were subject to cross examination, and their testimony is part of the record in this matter:

1. Brian Krawitz (Applicant's President),
2. Larry Plevier, PP, CME (Board engineering expert),
3. David Banisch, PP, AICP (Board planning expert), and
4. David Schley, PP, AICP (Township Planner);

**WHEREAS, AFTER CONSIDERING THE PRIOR APPROVALS AS WELL AS THE TESTIMONY REFERENCED ABOVE, 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 Prior Approvals, the Condition at Issue and the Easement.** As set forth above, the Board granted the 2016 approvals, consisting of preliminary subdivision approval with "c" variances and exceptions, to allow Bell and Edwards to subdivide Block 7702, Lots 10 and 11 into a 5-lot **subdivision** as memorialized in a resolution adopted on September 20, 2016.

The subdivision is now known as the “Fenwick Place” subdivision. The 2016 approvals were subject to various conditions, one of which, condition 11.b, required the recording of a “(t)ree preservation/buffer easement which shall allow for initial planting of additional trees and landscaping within the easement area and maintenance and replanting of any dead or dying landscaping but which shall prohibit otherwise removing or cutting or trimming landscaping, and shall prohibit structures, including but not limited to fences and irrigation systems.” The easement was required for preservation and buffering of neighboring lots. As also set forth above, the Board thereafter granted the 2018 final approval to Bell and Edwards to allow the recording of the subdivision plat and/or subdivision deeds to create the subdivision as memorialized in a resolution adopted January 16, 2018 and the 2018 final approval was subject to conditions, one of which incorporated by reference the conditions of the 2016 approvals, which included condition 11.b of the 2016 approvals. The easement was thereafter recorded and runs along the rear of each of the 5 lots where those lots adjoin existing residential lots as a means of minimizing the impact of the development on the existing neighborhoods. The lot owners are required to perpetually maintain and replace, as necessary, all of the newly planted and pre-existing trees within the easement on each of the lot owner’s respective lot.

2. **The Application.** As set forth above, the applicant has applied to the Board on behalf of the lot owners to eliminate the condition prohibiting structures such as fences and irrigation systems within the easement at the rear of each of the 5 lots. As Mr. Krawitz explained, the 5 lot owners would like to erect fences to the rear of the easement area and, under the terms of the easement, any fence to the rear of the 5 lots would have to be in front of the easement area, making maintenance of the trees in the easement area extraordinarily difficult, and making watering the newly planted trees impossible without an irrigation system which, under the terms of the easement, is prohibited in the easement area. Mr. Krawitz explained that the 5 lot owners wished to install a dark open fence along the rear of the easement area, along the rear property line, so that each lot owner could have complete access to the easement area for maintenance purposes. Mr. Krawitz emphasized that maintenance of the easement is the sole motivation for the applicant’s request.

3. **Standards for Considering the Request for Modification or Elimination of Conditions.** 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), 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 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 changed circumstances, our courts have held that a board should consider whether there have been changes in the neighborhood and, if so, the effect of

those changes in terms of the condition under consideration. Russell v. Tenaflly Board of Adj., 31 N.J. 58, 66 (1959). The Board believes that changed circumstances can also be a change in the law. Regarding “good cause”, 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 to the Board at the time it was imposed. Id. One factor that should be considered in making this determination is the extent to which the condition was discussed by the Board at the time it was imposed. Id. at 421.

4. **Board’s Findings.** The Board agrees with the applicant and finds that fencing in front of the easement area restricts the ability to care for the trees in the easement area. Moreover, as Board member John Crane pointed out, fencing to the rear of the easement area would allow for additional landscaping as well as additional enjoyment of the rear yard. As Board member Crane further noted, a dark open fence would blend in nicely with the existing landscaping and not cause a negative visual impact for the neighboring properties. As Chairwoman Kippy Piedici recalled, having been on the Board when the condition was established as part of the 2016 approvals, and as reflected in the resolution memorializing the 2016 approvals, there was a significant amount of concern from the residents of the surrounding community with regard to the negative visual impact the new development would have on their lots. As the Chairwoman noted, the installation of the proposed fencing would provide a visual screen for the neighbors while allowing the 5 lot owners to be able to preserve the trees within the easement area for aesthetic purposes. The Board finds that the standard for modifying the condition at issue has been met and that the condition should be modified to allow the installation of the proposed fencing, which must be uniform for all of the lots in the subdivision. The Board notes and finds that if the 5 lot owners are allowed to erect the fencing to the rear of the easement area, irrigation systems for maintenance of the trees and landscaping will not have to be installed since conventional watering means and methods via hoses can be employed. The Board also notes that the applicant agreed that all of the lot owners shall continue to be responsible to maintain the easement and the easement area. Finally, the Board finds that granting the application to modify the easement to allow the installation of fencing as proposed, subject to the applicant applying to and obtaining approval from the Township Committee to record an amended easement, is consistent with the intent of the original condition.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTIONS DULY MADE AND SECONDED ON AUGUST 2, 2022 THAT THE APPLICATION IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS AS SET FORTH BELOW:**

**B. RELIEF GRANTED**

1. **Modification of Condition 11.B of the September 20, 2016 Resolution.**  
Subject to the conditions set forth below, the Board hereby modifies condition 11.b of the September 20, 2016 Resolution to allow the easement previously recorded to be amended to

allow the installation of fencing within the easement area, but if and only if the Township Committee approves the recording of such an amended easement.

2. **Recommendation to the Township Committee to Consent to the Modification of the Easement.** The Board hereby recommends to the Township Committee that the easement be modified accordingly, thereby allowing applicant and the respective property owners to erect fences along their respective side and rear property lines within the easement areas, subject to the conditions set forth below.

### C. **CONDITIONS**

1. **Fencing Requirements.** Any fencing that is installed in the easement area shall be made of black aluminum material, located 6” from the side and rear property lines (as applicable), be a minimum of 50% open, be a maximum of 6-feet high, and be pool code compliant. All fencing in the easement area on the 5 lots shall be uniform in height and style and installed without disturbing any of the newly planted or pre-existing trees within the easement. The Township Engineer shall have discretion to approve minor alterations to the fence locations to avoid trees located in the required 6” setback location.

2. **This Approval and the Conditions Regarding Fencing to be Incorporated into an Amended Easement and All Conditions of the Easement Other Than the Elimination of the Prohibition on Installing Fencing Remain in Full Force and Effect.** The terms of the within approval shall be incorporated into an amended easement to be prepared by the Township Attorney or by the applicant’s attorney, at the discretion of the Township Attorney, subject to review and approval by the Township Attorney. All conditions of the easement other than the elimination of the prohibition on the installation of fencing shall remain in full force and effect. The amended easement shall be subject to the consent of the Township Committee and shall be recorded in the Office of the Somerset County Clerk prior to issuance of any permit for a fence within the easement.

3. **This Approval and the Conditions Regarding Fencing to be Incorporated into the Homeowners’ Association Documents.** The within approval and the fencing requirements condition shall be incorporated into the Homeowners’ Association documents. The amended documents shall be subject to review and approval by the Township Attorney and shall be recorded in the Office of the Somerset County Clerk prior to issuance of any permit for a fence within the easement.

4. **Prior Board Approvals and All Laws, Ordinances of Other Governmental Agencies.** The within approval and the use of the property remains subject to all conditions of prior Board approvals not eliminated by the within approval. 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 AUGUST 2, 2022:**

**THOSE IN FAVOR: BAUMANN, CRANE, DAMURJIAN, EORIO, MALLACH, MASTRANGELO & PIEDICI.**

**THOSE OPPOSED: NONE.**

\*\*\*\*\*

The above approval resolution was adopted by motion duly made and seconded on February 21, 2023 by the following vote of Board members:

<b><u>Members</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Baumann	X			
Crane	X			
Damurjian	X			
Eorio	X			
Mallach			(No longer a member)	
Mastrangelo	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 approval resolution duly adopted by the said Planning Board on February 21, 2023.

*Cyndi Kiefer*

---

**CYNDI KIEFER, Board Secretary**

**BERNARDS TOWNSHIP PLANNING BOARD**

**JAMES E. & KYUNG-MI ORTHMANN**

**BLOCK 9601, LOT 4.03  
49 LIBERTY CORNER ROAD**

**APPLICATION #PB22-004**

**RESOLUTION MEMORIALIZING A MODIFICATION OF CERTAIN CONDITIONS OF PRIOR, 2009, 2010 AND 2014 APPROVALS TO: (1) MODIFY CONDITION #3 OF THE 2014 APPROVALS TO REDUCE THE REQUIRED 270 FOOT FRONT YARD SETBACK TO 200 FEET FOR THE PROPOSED NEW DWELLING; (2) MODIFY CONDITION #5 OF THE 2014 APPROVALS TO ELIMINATE STORMWATER MANAGEMENT REQUIREMENTS THAT ARE NO LONGER APPLICABLE; (3) MODIFY CONDITION #5 OF THE 2010 APPROVAL TO IMPOSE DEADLINES BY WHICH THE EXISTING GARAGE/APARTMENT MUST BE REMOVED; AND (4) ELIMINATE CONDITION #9 OF THE 2009 APPROVAL SO AS NOT TO REQUIRE THE LANDSCAPING CONDITION**

**WHEREAS**, James E. and Kyung-Mi Orthmann (the “**applicant**”) made application to the Bernards Township Planning Board (the “**Board**”) for a modification of a condition of approval requiring a front yard setback of 270 feet (the “**setback condition**”), which condition was imposed by the Board in a resolution adopted on September 30, 2014 which memorializes an approval of application #PB14-003 (the “**2014 approval**”), and the applicants seek to modify the setback condition to reduce the required front yard setback from 270 feet to 221 feet (the “**application**”);

**WHEREAS**, the Board has exclusive jurisdiction of the application pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-48 and -50 and by virtue of Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982); Park Center v. Woodbridge Zoning Board of Adj., 365 N.J. Super. 284, 291 (App. Div. 2004), both of which stand for the proposition 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 conducted on October 4, 2022, with proof of service and proof of publication of notices of the hearing being on file with the Board so that the Board has procedural jurisdiction over the application, during which hearing the applicant was represented by Frederick B. Zelle, Esq. and the Board was represented by Joseph C. Tauriello, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS**, the application was deemed to be complete;

**WHEREAS**, the following individuals testified during the hearing, were subject to cross examination, and their testimony is part of the record in this matter:

1. James Orthmann (Co-applicant),
2. David Banisch, PP, AICP (Board planning expert), and
3. David Schley, PP, AICP (Township Planner);

**WHEREAS**, a variance plan and architectural drawings were submitted by the applicant for consideration by the Board, which documents are referenced below in the within resolution, and the Board took judicial notice in accordance with Board Rule 2:4-6 of prior approval resolutions adopted in 2009, 2010 and 2014 pertaining to the application, and the Board also considered a memo prepared by Township Planner David Schley, PP, AICP reviewing the application and the history of prior approvals pertaining to the application;

**WHEREAS, AFTER CONSIDERING THE VARIANCE PLAN AND ARCHITECTURAL DRAWINGS SUBMITTED BY THE APPLICANT, THE MEMO PREPARED BY THE TOWNSHIP PLANNER, THE PRIOR APPROVALS, AND THE TESTIMONY REFERENCED ABOVE, 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 Property, Existing Carriage House Dwelling, and Existing Accessory Garage/Apartment Building.** The property is an 8.74-acre lot situated in the R-1 (3-acre minimum lot size) zoning district (the “**R-1 zone**”). There is an existing principal permitted dwelling on the property which was constructed circa 1919 as a carriage house (and the existing dwelling will be referred to as the “**carriage house**” throughout the remainder of this resolution to avoid confusion). The carriage house was, at the time of its construction, a permitted accessory building to the “Frothingham / Sloane” mansion (the “**mansion**”), which was at that time the principal permitted dwelling on the property. The mansion currently houses the United States Golf Association (“**USGA**”) museum which is located on the adjoining USGA campus to the southwest of the property. In addition to the carriage house, the property also contains a detached building containing a garage and apartment (the “**garage/apartment building**”) and a single driveway providing access to both the carriage house and the garage/apartment building.

2. **The Prior Approvals and Conditions at Issue.** The Board’s findings as to the prior approvals and conditions at issue are as follows:

a. **The 2009 Approvals.** The property was created pursuant to the Board’s approval of application #PB09-004 in 2009 (the “**2009 approvals**”), which is memorialized in a resolution adopted on December 22, 2009 (the “**2009 resolution**”). The 2009

approvals included minor subdivision approval and conditional use approval to allow the subdivision of a then 14.3-acre lot into two lots, a 3.5-acre northerly lot (Lot 4.02), and a 10.1-acre southerly lot (Lot 4.01). Lot 4.01, the 10.1-acre lot, is presently Lot 4.03 and is the property. The 2009 approvals also included conditional use approval to allow a proposed development on the property, consisting of demolition of the carriage house as well as the garage / apartment building, and the construction of a new 16,000 square foot dwelling containing an accessory apartment for occupancy by a family member. Conditional use approval was required to allow the accessory apartment which is a conditional use in the R-1 zone. While the Board found in the 2009 resolution that the proposed development as a whole was consistent with the Township Master Plan, the Board specifically found that the removal of the carriage house – which it found to be a historically significant building – was inconsistent with the Historic Preservation Plan element of the Master Plan. To mitigate this inconsistency, the Board imposed a condition on the 2009 approval to promote the preservation of the existing vistas along the Liberty Corner Road scenic corridor – which is one of the objectives of the Master Plan – by requiring enhanced front yard setbacks, above and beyond the minimum front yard setback required by the Township ordinance. While the required minimum front yard setback applicable to the property is 100-feet, front yard setbacks of a least 200-feet were recommended by the Master Plan for lots fronting on Liberty Corner Road. The Board imposed condition #2 of the 2009 resolution which provides: “The applicant shall record deed restrictions / restrictive covenants . . . creating a minimum 300-foot front yard setback for Lot 4.01 and a minimum 250-foot front yard setback for Lot 4.02. As set forth above, Lot 4.01, the 10.1-acre lot, is now Lot 4.03 which is the property.

b. **The 2010 Approval.** The Board granted application #PB09-004A in 2010 (the “**2010 approval**”), which is memorialized in a resolution adopted on July 20, 2010 (the “**2010 resolution**”). The 2010 approval amended the 2009 approval to allow the carriage house to remain as an accessory building when the new 16,000 square foot principal dwelling is constructed on the property. As set forth in the 2010 resolution, the Board found that the preservation and adaptive reuse of the carriage house – which the Board had previously found to be historically significant – was consistent with the Historic Preservation Plan element of the Master Plan. Given that, the 2010 approval also included two “c” variances to allow the following zoning ordinance deviations: (a) carriage house as an accessory building to be located in front of the proposed 16,000 square foot principal dwelling, thus in the front yard; and (b) carriage house as an accessory building to be 31’-4” high where the maximum height permitted for an accessory building is 20 feet. Condition #1 of the 2010 resolution provides: “All of the conditions contained in the [2009 resolution] shall remain in full force and effect, except as specifically modified by this amendment to the [2009] approval.” Thus, in accordance with said condition #1, the minimum front yard setback for the property (which is currently Lot 4.03 and was formerly Lot 4.01) remained 300 feet.

c. **The 2011 Extension of Time and the Recording of the Subdivision Plat / Deed and the Recording of the Deed Restrictions.** The Board granted application #PB09-004B in 2011 memorialized by a resolution adopted on March 22, 2011 (the “**2011 resolution**”). The 2011 resolution memorializes the grant of an extension of the time in

which the applicant had to perfect the subdivision by recording a subdivision plat or subdivision deed (the “**2011 Extension**”). The applicant thereafter perfected the subdivision and recorded with the Somerset County Clerk on May 13, 2011 a Declaration of Restrictions and Easement containing the various conditions imposed by the 2009 approvals and the 2010 approval.

d. **The 2014 Approval.** The Board granted application #PB14-003 in 2014 (the “**2014 approval**”) which is memorialized in a resolution adopted by the Board on September 30, 2014 (the “**2014 resolution**”). The 2014 application was filed by the USGA with the applicant’s consent for a lot line adjustment whereby 1.4-acres of the property (present Lot 4.03 and former Lot 4.01) was conveyed to the adjoining USGA campus lot. Because this conveyance would reduce the amount of rear yard area that would remain for the property, the Board modified the previously imposed 300-foot minimum front yard setback requirement applicable to the property from 300-feet to 270-feet to allow the proposed new 16,000 square foot dwelling to be shifted forward by 30-feet. Accordingly, condition #3 of the 2014 resolution provides: “Condition #2 [of the 2009 resolution] shall be revised to provide as follows: ‘The applicant may record amended deed restrictions / restrictive covenants. . . changing the minimum 300-foot front yard setback requirement for [the property] from 300 feet to 270 feet.’” On November 26, 2014, the applicant recorded with the Somerset County Clerk a deed perfecting the lot line adjustment and an Amended Declaration of Restrictions and Easements containing the various conditions imposed by the 2014 approval.

3. **The Proposed Development, Application and Requested Relief.** The applicant proposes to forgo construction of the previously approved 16,000 square foot dwelling on the property and, instead, utilize the carriage house on a permanent basis as the principal dwelling on the property, making extensive interior renovations to the carriage house and constructing two additions to the carriage house to create a total of five (5) garage bays. The applicant proposes an approximately 550 square foot three-car garage addition to be attached to the east side of the carriage house and an approximately 350 square foot two-car garage addition to be attached to the west side of the carriage house.<sup>1</sup> The existing garage/apartment building is proposed to be removed, consistent with the prior approvals. The applicant requires modification of certain of the of the prior approvals by reason of the change in development plans. The modification requested in the application as well as the other modifications that were requested during the hearing are as follows:

a. **Modification of Condition #3 of the 2014 Resolution.** The application submitted by the applicant seeks the modification of condition #3 of the 2014 resolution to reduce the minimum front yard setback requirement for the property from 270-feet to 221-feet because the existing carriage house has a front yard setback of 221.4-feet, and the proposed easterly garage addition will have a front yard setback of 221.85-feet. (The initially required 300-foot front yard setback imposed by condition #2 of the 2009 resolution was modified to 270-feet by condition #3 of the 2014 resolution.)

---

<sup>1</sup> While the “c” variances for the location of the carriage house as an accessory building in front of the previously proposed 16,000 square foot principal dwelling and the height of the carriage house as an accessory building have expired by the passage of time, they will no longer be necessary because the carriage house is now proposed as the principal dwelling on the property and will no longer be an accessory building because the 16,000 square foot principal dwelling is no longer proposed to be constructed.



b. **Modification of Condition #5 of the 2014 Resolution.** Condition #5 of the 2014 resolution provides that “condition #11 [of the 2009 resolution] shall be revised to provide as follows: ‘So long as the impervious coverage on Lot 4.01 [which is the property] does not exceed 44,172 square feet and the impervious coverage on Lot 4.02 does not exceed 15%, there shall be no need for additional stormwater management facilities on each said lot because the stormwater management system for those lots have been designed to accept up to 44,172 square feet from Lot 4.01 and up to 15% impervious lot coverage from Lot 4.02. Prior to exceeding 44,172 square feet of impervious coverage on Lot 4.01 [the property], the stormwater management facilities on Lot 4.01 [the property] shall be subject to review and approval by the [] Board.’” The current proposed development significantly reduces the amount of impervious coverage on the property (Lot 4.03 which was the former Lot 4.01) by 24,388 square feet to the extent that the proposed increase in impervious coverage on the property is now only 861 square feet. Nonetheless, stormwater management requirements are applied to the tract that was subject to the subdivision as a whole, i.e., based on development of both Lots 4.02 and Lot 4.03 combined. The applicant was asked to identify the maximum amount of impervious coverage that will be proposed on the property and the maximum amount of impervious coverage that the stormwater management system on the property will be designed to accommodate and then discuss an appropriate modification to condition #5 of the 2014 resolution accordingly. The applicant requested during the hearing that condition #5 of the 2014 resolution be modified to eliminate the stormwater management requirements that are no longer applicable.

c. **Modification of Condition #5 of the 2010 Resolution.** Condition #5 of the 2010 resolution provides that “the garage [/] apartment building on the [property] shall be removed.” The condition allows the garage/apartment building to “be retained temporarily, while the carriage house is being used as a principal residence.” Since the carriage house is now being proposed to be the permanent principal dwelling on the property, the applicant agreed during the hearing that condition #5 of the 2010 resolution needs to be modified to provide an appropriate deadline for the removal of the garage / apartment building. The applicant requested during the hearing that the conditions be modified.

d. **Modification of Condition #9 of the 2009 Resolution.** Condition #9 of the 2009 resolution imposes the requirement for landscaping to be provided on Lot 4.01 (the property) and imposes the Board’s standard landscape committee inspection requirements. Since the applicant now propose to abandon the construction of the previously approved 16,000 square foot principal dwelling, the Board suggested during the hearing that the applicant request that condition #9 of the 2009 resolution be eliminated based on Board members visiting the property and reporting to the Board during the hearing that the existing carriage house was well buffered from Liberty Corner Road by existing vegetation. The applicant requested during the hearing that the condition be eliminated.

4. **Grounds for Modification of Approved Conditions.** Our courts have held that land use boards have 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 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 changed circumstances, our courts have held that a board should consider whether there have been changes in the neighborhood and, if so, the effect of those changes in terms of the condition under consideration. Russell v. Tenaflly Board of Adj., 31 N.J. 58, 66 (1959). The Board believes that changed circumstances can also be a change in the law. 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. See, 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 to the Board at the time it was imposed. Id. One factor that should be considered in making this determination is the extent to which the condition was discussed by the Board at the time it was imposed. Id. at 421. As to the “frustration of an appropriate purpose” grounds referred to in Allied, 221 N.J. Super. at 414, the Board should consider whether the proposed modification or proposed use of the property is appropriate and, if so, whether the restrictive condition frustrates that appropriate purpose without modification or amendment.

##### 5. **Findings as to Modification of Condition #3 of the 2014 Resolution.**

As set forth above, the applicant proposes to forgo construction of the previously approved 16,000 square foot dwelling on the property and, instead, utilize the carriage house on a permanent basis as the principal dwelling on the property, making extensive interior renovations to the carriage house and constructing two additions to the carriage house to create a total of five (5) garage bays. As such, the application submitted by the applicant seeks the modification of condition #3 of the 2014 resolution to reduce the minimum front yard setback requirement for the property from 270-feet to 221-feet because the existing carriage house has a front yard setback of 221.4-feet, and the proposed easterly garage addition will have a front yard setback of 221.85-feet. (The initially required 300-foot front yard setback imposed by condition #2 of the 2009 resolution was modified to 270-feet by condition #3 of the 2014 resolution.) The Board notes and stresses that it previously found that the preservation and adaptive reuse of the carriage house was consistent with the Historic Preservation Plan element of the Master Plan because the carriage house is historically significant.<sup>2</sup> The Board finds that its intent and purpose of imposing the enhanced front yard setback requirements in the first instance was to mitigate the initially approved 16,000 square foot dwelling’s inconsistency with the Master Plan. Now that the 16,000 square foot dwelling is no longer proposed to be constructed, the Board finds that

---

<sup>2</sup> The Board notes and finds in this regard that the carriage house was designed by John Russell Pope, the architect that designed the Jefferson Memorial in Washington, D.C.

there is no longer a need to mitigate its presence with a 270-foot front yard setback requirement. As such, the Board finds that good cause exists to modify condition #3 of the 2014 resolution to reduce the enhanced front yard setback requirement from 270-feet to 200-feet, which is the minimum front yard setback recommended by the Master Plan to promote the preservation of existing vistas along the Liberty Corner Road scenic corridor. The Board also finds that it is appropriate to modify the condition in this manner due to the changed circumstances of the applicant no longer proposing to construct the 16,000 square foot dwelling and proposing, instead, to convert the carriage house from an accessory building to a principal permitted dwelling. Finally, the Board also finds that it would frustrate an appropriate purpose if condition #3 was not modified to reduce the front yard setback because the applicant would then be prevented from adaptively reusing and preserving the carriage house consistent with the Historic Preservation Plan element of the Master Plan.

**6. Findings as to Modification of Condition #5 of the 2014 Resolution.**

As set forth above, the current proposed development significantly reduces the amount of impervious coverage on the property (Lot 4.03 which was the former Lot 4.01) by 24,388 square feet to the extent that the proposed increase in impervious coverage on the property is now only 861 square feet. Nonetheless, stormwater management requirements are applied to the tract that was subject to the subdivision as a whole, i.e., based on development of both Lots 4.02 and Lot 4.03 combined. As also set forth above, the applicant was asked to identify the maximum amount of impervious coverage that will be proposed on the property and the maximum amount of impervious coverage that the stormwater management system on the property will be designed to accommodate and then discuss an appropriate modification to condition #5 of the 2014 resolution accordingly. The applicant requested during the hearing that condition #5 of the 2014 resolution be modified to eliminate the stormwater management requirements that are no longer applicable. The Board finds that this request is consistent with its intent and purpose of imposing condition #5 of the 2014 resolution in the first instance so that good cause exists to so modify said condition. The Board also finds and notes that condition #5 of the 2014 resolution can be modified in this manner without having an adverse effect on public health or safety.

**7. Findings as to Modification Condition #5 of the 2010 Resolution.** As

set forth above, condition #5 of the 2010 resolution provides that “the garage [/] apartment building on the [property] shall be removed.” The condition allows the garage/apartment building to “be retained temporarily, while the carriage house is being used as a principal residence.” Since the carriage house is now being proposed to be the permanent principal dwelling on the property, the applicant agreed during the hearing that condition #5 of the 2010 resolution needs to be modified to provide an appropriate deadline for the removal of the garage / apartment building. The applicant requested during the hearing that the conditions be modified to provide that a certificate of occupancy shall be obtained for the carriage house garage additions within 90 days of passing all final inspections and that the existing garage / apartment building shall be demolished and removed from the property within 90 days of the certificate of occupancy. The Board finds that this requested modification is consistent with its intent and purpose of imposing condition #5 of the 2010 resolution in the first instance so that good cause exists to so modify said condition. The Board further finds, however, that an additional condition must be imposed to ensure that the garage / apartment building is timely demolished

and removed which is that no permanent certificate of occupancy shall be issued until and unless the garage / apartment building is demolished and removed from the property.

8. **Findings as to Modification of Condition #9 of the 2009 Resolution.**

As set forth above, condition #9 of the 2009 resolution imposes the requirement for landscaping to be provided on the property, and imposes the Board's standard landscape committee inspection requirements. Since the applicant now proposes to abandon the construction of the previously approved 16,000 square foot principal dwelling, the Board suggested during the hearing that the applicant request that condition #9 of the 2009 resolution be eliminated based on Board members visiting the property and reporting to the Board during the hearing that the existing carriage house was well buffered from Liberty Corner Road by existing vegetation. The applicant requested during the hearing that the condition be eliminated. The Board finds that good cause exists to eliminate condition #9 because the landscaping condition and the condition providing for a landscape committee is no longer necessary to comply with the intent and purpose of condition #9 as the existing carriage house is well buffered from Liberty Corner Road by existing vegetation.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTIONS DULY MADE AND SECONDED ON OCTOBER 4, 2022 THAT THE APPLICATION IS GRANTED SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

B. **RELIEF GRANTED**

1. **Modification of Condition #3 of the 2014 Resolution.** Subject to the conditions set forth below, condition #3 of the 2014 resolution is modified to reduce the minimum front yard setback requirement for the property from 270-feet to 200-feet. (The initially required 300-foot front yard setback imposed by condition #2 of the 2009 resolution was modified to 270-feet by condition #3 of the 2014 resolution.)

2. **Modification of Condition #5 of the 2014 Resolution.** Subject to the conditions set forth below, condition #5 of the 2014 resolution is modified to eliminate the stormwater management requirements that are no longer applicable to Lot 4.03 (which was the former Lot 4.01), which stormwater management requirements shall be determined by the Township Engineer and Township Planner based on the "Variance Plan" (1 sheet) prepared by Apgar Associates dated May 3, 2022, as revised in accordance with the conditions set forth below.

3. **Modification of Condition #5 of the 2010 Resolution.** Subject to the conditions set forth below, condition #5 of the 2010 resolution is modified to provide that the carriage house shall be the permanent principal dwelling on the property, and the applicant shall comply with the following time deadlines in completing the proposed development:

a. A certificate of occupancy shall be obtained for the carriage house garage additions within 90 days of passing all final inspections.

b. The garage / apartment building shall be demolished and removed from the property within 90 days of the issuance of the certificate of occupancy.

c. No permanent certificate of occupancy shall be issued until and unless the garage / apartment building is timely demolished and removed from the property.

4. **Modification of Condition #9 of the 2009 Resolution.** Subject to the conditions set forth below, condition #9 of the 2009 resolution, which imposes the requirement for landscaping to be provided on the property, and imposes the Board's standard landscape committee inspection requirements, is eliminated in its entirety.

5. **Recommendation to the Township Committee that a Second Amended Declaration of Restrictions and Easement be Recorded.** The Board recommends to the Township Committee consent to the applicant recording with the Somerset County Clerk a Second Amended Declaration of Restrictions and Easement to reflect the terms and conditions of the within modification of prior conditions, which document would be subject to review and approval by the Township Attorney.

### C. **CONDITIONS**

1. **Revisions to the Variance Plan.** The applicant shall be required to make revisions to the "Variance Plan" (1 sheet) prepared by Apgar Associates dated May 3, 2022 in accordance with the following comments emanating in the memo to the Board from David Schley, PP, AICP, Township Planner, dated September 21, 2022, which revisions shall be made to the satisfaction of the Township Planner no later than August 21, 2023 (which is six (6) months from the date the within resolution is adopted):

a. Delete "variance" from the plan title and zoning notes as no variances are required.

b. Add a note on the plan stating that this plan replaces and supersedes the "Concept Full Development Plan" approved by the Board by the 2014 approval.

c. Revise the plan to show the existing tree within the proposed driveway in the vicinity of the easterly garage to be removed, and to show the existing pavement outside the limits of the proposed driveway to be removed.

d. Revise the plan to show complete tree removal and replacement information in accordance with ordinance section 21-45, including a list of trees to be removed and a calculation of required replacement trees and indicate on the plan where the replacement trees will be planted.

e. Revise the plan to label the existing / proposed primary septic field and the proposed reserve septic field serving the carriage house.

In in the event that the applicant fails to revise the plan as required above and to the satisfaction of the Township Planner within said time period set forth above, or extension



thereof as granted by the Board, the modification of conditions set forth in the within resolution shall expire and become automatically null and void. Any dispute(s) concerning satisfaction of any conditions related to the revisions of the plan may be brought to the Board for resolution by written letter application submitted by the applicant without the necessity for public notice but on written notice to the Township Planner and Secretary of the Board.

2. **Design, Construction and Location of Improvements.** The applicant shall be required to construct and locate the proposed development in substantial conformity with the following plans:

a. “Variance Plan” (1 sheet) prepared by Apgar Associates dated May 3, 2022, as revised in accordance with condition #1 above; and

b. Architectural floor plans and elevations (3 sheets) prepared by D2A Architecture and Design, LLC dated June 27, 2022.

The “Variance Plan” (1 sheet) prepared by Apgar Associates dated May 3, 2022, as revised in accordance with condition #1 above, replaces and supersedes the “Concept Full Development Plan” approved by the Board by the 2014 approval, which is deemed to be withdrawn and null and void.

3. **Carriage House to be the Permanent Principal Dwelling and Timing Regarding Certificate of Occupancy and Removal of Garage / Apartment Building.** The carriage house shall be the permanent principal dwelling on the property, and the applicant shall comply with the following time deadlines in completing the proposed development:

a. A certificate of occupancy shall be obtained within 90 days of passing all final inspections for each of the carriage house garage additions.

b. The garage / apartment building shall be demolished and removed from the property within 90 days of the issuance of a certificate of occupancy for either of the carriage house garage additions.

c. No permanent certificate of occupancy shall be issued until and unless the garage / apartment building is timely demolished and removed from the property.

4. **Stormwater Management Requirements for the Property.** The stormwater management requirements for the property shall be determined by the Township Engineer and Township Planner based on the “Variance Plan” (1 sheet) prepared by Apgar Associates dated May 3, 2022, as revised in accordance with the conditions set forth above.

5. **Second Amended Declaration of Restrictions and Easement.** The applicant shall record with the Somerset County Clerk prior to the issuance of any zoning and construction permits a Second Amended Declaration of Restrictions and Easement to reflect the terms and conditions of the within modification of prior conditions, which document shall be subject to review and approval by the Township Attorney. (As set forth above, the Board has recommended to the Township Committee that they consent to the amended declaration.)

6. **Prior Board Approvals and All Laws, Ordinances of Other Governmental Agencies.** The within approval and the use of the property remains subject to all conditions of prior Board approvals not modified or eliminated by the within approval. 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 OCTOBER 4, 2022:**

**THOSE IN FAVOR: BAUMANN, CRANE, DAMURJIAN, EORIO, LADYZINSKI, MALLACH, MASTRANGELO, PIEDICI & SEVILLE.**

**THOSE OPPOSED: NONE.**

\*\*\*\*\*

The above approval resolution was adopted by motion duly made and seconded on February 21, 2023 by the following vote of Board members:

<b><u>Members</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
Baumann	X			
Crane	X			
Damurjian	X			
Eorio	X			
Ladyzinski	X			
Mallach			(No longer a member)	
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 approval resolution duly adopted by the said Planning Board on February 21, 2023.

*Cyndi Kiefer*

**CYNDI KIEFER, Board Secretary**

**BERNARDS TOWNSHIP PLANNING BOARD**

**RESOLUTION AUTHORIZING CLOSED SESSION**

**WHEREAS,** N.J.S.A. 10:4-12 (the Open Public Meeting Act) authorizes this Board to exclude the public from that portion of a meeting at which this Board discusses certain matters:

**WHEREAS,** the Board is about to discuss such matters, namely attorney client privileged legal advice regarding the review of closed session minutes and whether to release closed session minutes where confidentiality is required for the Board Attorney to exercise his ethical duties as a lawyer.

**WHEREAS,** this Board believes the public should be excluded from those discussions;

**NOW, THEREFORE,** be it resolved by the Bernards Township Planning Board on February 21, 2023 that the Board now go into closed session and the public be excluded and that the Board believes that the discussions conducted in the closed session may not be disclosed to the public because they will involve attorney-client privileged advice.

The above Resolution was adopted on February 21, 2023, by the following vote of the members of the Board:

AYES:	Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo, Piedici, Seville
NAYES:	NONE

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 February 21, 2023.

*Cyndi Kiefer*

---

**CYNDI KIEFER, Board Secretary**

**BERNARDS TOWNSHIP PLANNING BOARD**

**RESOLUTION AUTHORIZING RELEASE OF  
CERTAIN CLOSED SESSION MINUTES**

**WHEREAS**, N.J. S.A. 10:4-12 (the Open Public Meeting Act) authorizes this Board to exclude the public from that portion of a meeting at which this Board discusses certain matters;

**WHEREAS**, the Board has, from time to time, excluded the public from certain closed session discussions of such matters;

**WHEREAS**, the Board believes that minutes from certain of those closed sessions should be disclosed to the public at this time because there is no longer a need to keep them confidential;

**NOW, THEREFORE, BE IT RESOLVED** by the Bernards Township Planning Board on February 21, 2023, that the minutes of the closed session meetings set forth on the chart below shall be released to the public by placement in the applicable open session minutes book(s);

**BE IT FURTHER RESOLVED** by the Bernards Township Planning Board that any waiver of the attorney-client privilege as to disclosure of a discussion of any matter subject to closed session minutes shall be limited to the discussion of the matter on the specific dates of the closed session(s) at issue and as to the discussion that occurred in the closed session, and any waiver of the attorney-client privilege shall not constitute a general waiver of the attorney client privilege as to the matter(s) at issue and/or as to any discussion of the matter(s) at issue during any closed session discussion that has not been released to the public and which remains confidential.

The above Resolution was adopted on the February 21, 2023, by the following vote of the members of the Board:

AYES:           Baumann, Crane, Cuzzo, Damurjian, Eorio, Manduke, Mastrangelo,  
                    Piedici, Seville

NAYES:        NONE

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 February 21, 2023.

*Cyndi Kiefer*

---

**CYNDI KIEFER, Board Secretary**

# PLANNING BOARD

## Closed Session Minutes Scheduled for Release

MEETING DATE	SUBJECT	RECOMMENDATION
04/15/08	MQ	RELEASE
09/16/08	MQ	RELEASE
12/2/2008 #1	MQ	RELEASE
01/06/09	MQ	RELEASE
03/03/09	MQ	RELEASE
05/05/09	MQ	RELEASE
08/04/09	MQ	RELEASE
08/18/09	MQ	RELEASE
08/26/09	MQ	RELEASE
10/20/09	MQ	RELEASE
12/08/09	MQ	RELEASE
01/04/11 #2	MQ	RELEASE
04/19/11	MQ	RELEASE
11/29/12	Personnel	RELEASE
05/30/13	MQ	RELEASE
08/29/13	Legal Advice - Drainage	RELEASE
4/19/2016 #2	Schenk Lit	RELEASE
9/20/2016 #2	Schenk Lit	RELEASE
06/06/17	Cody Smith Lit - ISBR	RELEASE
10/17/17	Jeff Plaza Lit - ISBR	RELEASE
06/18/19 #2	Barth Lit - ISBR	RELEASE
12/08/20	Personnel	RELEASE
08/16/22 #1	ISBR Litigation	RELEASE