

TOWNSHIP OF BERNARDS

PLANNING BOARD

MINUTES ^{v2}

REGULAR SESSION

October 3, 2023

Chairwoman Piedici called the meeting to order at 7:33 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, Mastrangelo, Piedici, Seville
Members Absent: Manduke
Also Present: Board Attorney, Jonathan E. Drill, Esq.*; Township Planner, David Schley, PP, AICP;
Board Planner, David Banisch, PP, AICP; Board Secretary, Cyndi Kiefer

*via telephone

APPROVAL OF MINUTES

August 8, 2023 – Regular Session – On motion made by Mr. Crane and seconded by Mr. Seville, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF RESOLUTION

Fellowship Village Inc.; Blocks 9301 & 9401; Lots 33 & 9; 33 & 55 Allen Road; PB22-005 (approved) – Moved by Mr. Damurjian and seconded by Mr. Cuozzo that the resolution be adopted as drafted.

Roll call: Aye: Crane, Cuozzo, Damurjian, Ladyzinski, Mastrangelo, Piedici, Seville
Nay: NONE
Ineligible: Baumann, Eorio

Motion carried.

MASTER PLAN REVIEW – Final Draft – Entire Document

Mr. Banisch stated that the draft of Chapter XIII - Green Buildings and Environmental Sustainability Plan had not been included in the draft of the entire Master Plan which the Board received in early September. He noted that the draft of that chapter had been reviewed by the Board three (3) times previously and that it would be included as the second to the last chapter (the last being the Comparison to Other Plans chapter) in the revised final draft of the Master Plan.

Chairwoman Piedici, Ms. Mastrangelo and Mr. Damurjian had reviewed the Master Plan draft over the summer and had submitted comments and revisions which had been incorporated into the final draft that the Board received. All three (3) members felt that their comments had been adequately addressed with the exception of some additional minor edits that could be addressed in the revised final draft.

Chairwoman Piedici began a discussion about the timeline for the public hearing and adoption of the Master Plan which is tentatively scheduled for the Board's Tuesday, December 5, 2023 meeting. Mr. Banisch agreed to

provide electronically, a revised final draft of the entire Master Plan which would include the remaining comments from Board Members no later than Tuesday, October 17, 2023. The Board would then have an opportunity for a last review with any additional comments submitted to Mr. Banisch by Thursday, October 31, 2023. The final document, along with five (5) paper copies, would then be delivered to Ms. Kiefer's office no later than Friday, November 10, 2023. A straw poll of the Board indicated that the schedule was acceptable.

The meeting was opened to the public for questions or comments. Todd Edelstein, 172 Riverside Drive, commended the Board for its work on the Master Plan and asked when the document would be available for public inspection. Ms. Kiefer responded that, as required by the Municipal Land Use Law, it would be posted to the Board's website a minimum of 10 days prior to the December 5th hearing.

COMMENTS FROM MEMBERS OR STAFF – Chairwoman Piedici cancelled the 10/17/2023 meeting.

ADJOURN

Moved by Ms. Mastrangelo and seconded by Mr. Damurjian, all eligible in favor and carried, the meeting was adjourned at 8:19 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Planning Board

Adopted as drafted 12/05/2023.

10/10/2023 dskpjd

BERNARDS TOWNSHIP PLANNING BOARD

FELLOWSHIP SENIOR LIVING, INC.

**BLOCK 9301, LOT 33 / BLOCK 9401, LOT 9
8000 FELLOWSHIP ROAD / 55 ALLEN ROAD**

APPLICATION #PB22-005

**RESOLUTION MEMORIALIZING GRANT OF CONDITIONAL USE APPROVAL
AND PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH EXCEPTIONS
TO ALLOW THE CONSTRUCTION OF A TWO-STORY STAFF HOUSING
BUILDING WITH RELATED SITE IMPROVEMENTS**

WHEREAS, Fellowship Senior Living, Inc. (the “**applicant**”) owns the following two (2) lots in the Township of Bernards (the “**Township**”): (1) an irregularly shaped 72.569-acre lot located at 8000 Fellowship Road and designated on the Township tax maps as Block 9301, Lot 33 (“**Lot 33**”), which lot contains the Fellowship Village Continuing Care Retirement Community (“**CCRC**”) facility comprised of a number of buildings and related site improvements known as “Fellowship Village” (the “**Fellowship Village CCRC**”), and (2) an irregularly shaped 2.87-acre lot located at 55 Allen Road and designated on the Township tax maps as Block 9401, Lot 9 (“**Lot 9**”) which abuts Lot 33 (Lot 33 and Lot 9 together are referred to as the “**property**”), which property is situated in the R-2 residential zoning district (the “**R-2 zone**”), in which zone CCRC’s are conditional uses;

WHEREAS, the applicant proposes to merge Lot 33 and Lot 9 to expand the existing Fellowship Village CCRC campus by constructing a two-story building with a total floor area of 3,402 square feet and seven bedrooms on the property for the purpose of creating a staff residence building (the “**proposed building**”), along with related site improvements (the “**proposed site improvements**”), including seven (7) standard parking spaces, an ADA parking space, lighting and an underground stormwater management system (the proposed building and proposed site improvements are referred to as the “**proposed development**”);

WHEREAS, the applicant has made application to the Bernards Township Planning Board (the “**Board**”) for conditional use approval, preliminary and final site plan approval and exceptions from certain site plan ordinance requirements (the “**application**”) to allow construction of the proposed development;

WHEREAS, the Board has exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-20 in accordance with N.J.S.A. 40:55D-67, -46, -50 and -51;

WHEREAS, the application was deemed to be complete;

WHEREAS, a number of documents were submitted to the Board related to the application by the applicant, Board and Township experts and officials, as well as outside agencies, all of which documents are on file with the Board and are part of the record in this

matter, and the following are the latest versions of the plans and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Preliminary and Final Site Plan (14 sheets) for “Fellowship Senior Living Proposed Staff Residences” prepared by Dynamic Engineering, dated September 10, 2022, last revised December 12, 2022 (the “**site plans**”),
2. Drainage Statement, prepared by Daniel Dougherty, PE, PP of Dynamic Engineering, dated February 2023 (the “**drainage statement**”), and
3. Floor Plans and Elevations (1 sheet) for Fellowship Village Staff Housing, prepared by KDA Architects, dated August 3, 2022 (the “**floor plans and elevations**”);

WHEREAS, the Board considered the application at a duly noticed public hearing on March 21, 2023, with affidavits of publication and service of notice being submitted to the Board and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Jennifer Phillips Smith, Esq. (of Gibbons, PC), and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

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

1. David Fowles, RA (applicant’s architectural expert),
2. Daniel Dougherty, PE (applicant’s engineering expert),
3. Chris Black (applicant’s vice president),
4. David Banisch, PP, AICP (Board Planning Expert),
5. David Schley, PP, AICP (Township planner), and
6. Bryce Good, PE, CPESC (Board engineering expert);

WHEREAS, the following exhibits were entered into the record during the hearing and are part of the record in this matter;

- A-1. Aerial photo with white lot lines based on 2015 New Jersey orthophotography,
- A-2. “Site Plan Rendering” exhibit, prepared by Dynamic Engineering Consultants, PC, dated March 21, 2023, and
- A-3. Google Maps Color aerial overlay of 6/5/22, dated March 21, 2023;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO ALL OF THE SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND FACTUAL 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. FINDINGS AND CONCLUSIONS

1. The Property, Existing Improvements and Applicable Zoning. As set forth above, the property consists of two lots, Lot 33 on which the existing Fellowship Village CCRC is located, and Lot 9 which was acquired by the applicant in 2021, contains 2.87 acres abutting Lot 33, is currently vacant and largely wooded, with a prior dwelling, septic system and well having been removed/abandoned in 2022. The property, after merger of Lot 9 into Lot 33, will be approximately 75.4-acres in size. There are wetlands, wetland buffers, and stream buffers on the property, all within conservation easements, and all with boundary marker signs in place. As set forth above, the property is situated in the R-2 zone. Residential development is a principal permitted use in the R-2 zone pursuant to ordinance sections 21-10.4.a.1.(a) and 21-10.4.b, which incorporate by reference the residential type and bulk regulations contained in Table 401 of the zoning ordinance. Table 401 allows “standard residential” dwellings in the R-2 zone on 2-acre minimum size lots as principally permitted uses, and ordinance section 21-10.11.a provides that “standard residential development” is “development of single family detached houses.” Certain additional uses are conditional uses in the R-2 zone pursuant to ordinance section 21-10.4.a.3.¹ Relevant to the application here is ordinance section 21-10.4.a.3.(e), which lists CCRC’s as a conditional use in accordance with the conditional use standards set forth in ordinance section 21-12.2 (containing the general standards applicable to all conditionally permitted uses) and ordinance section 21-12.3.L (containing the specific conditional use standards applicable to a CCRC). If a proposed conditional use complies with all of the applicable conditional use standards, it is considered a conditional permitted use, and any application for development for such conditional use would be within the jurisdiction of the Planning Board and would require conditional use approval along with any other required relief for the proposed development. See, N.J.S.A. 40:55D-67 and -60. If a proposed conditional use does not comply with all of the applicable conditional use standards, it is considered a non-permitted conditional use, and any application for development for such conditional use would be within the jurisdiction of the Board of Adjustment and would require a “d(3)” conditional use variance from the Board of Adjustment along with any other required relief for the proposed development. See, N.J.S.A. 40:55D-70d(3) and -76b.

¹ As defined in the Municipal Land Use Law (the “MLUL”), specifically in N.J.S.A. 40:55D-3, a conditional use is “a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards of the location and operation of such as contained in the zoning ordinance” As held by our Supreme Court in Coventry Square, Inc. v. Westwood Zoning Board of Adj., 138 N.J. 285,287 (1994), “a conditional use is neither prohibited throughout the zone nor permitted at every location in the zone; rather, it is permitted at those locations in the zone where the use meets the conditions set forth in the zoning ordinance.”

2. The Fellowship Village CCRC is a Conditionally Permitted CCRC

Previously Approved by the Board. A CCRC is defined in ordinance section 21-3.1 as “the provision of lodging and nursing, medical or other related services at the same or another location to an individual 62 years of age or older, with or without a spouse or other members of the person’s housekeeping unit, pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without periodic charges.”

Pursuant to section 21-12.3.L.5, a CCRC “may include personal, cultural, religious and other ancillary services customary to a CCRC” and “these services may include uses such as clinics, therapies, wellness and educational programs, theaters, performing arts programs, restaurants, and salons.” The Fellowship Village CCRC is comprised of a number of buildings and related site improvements, including residences, a community center, a health center building, parking areas, and stormwater management facilities and is a conditionally permitted CCRC as it complies with all conditional use standards applicable to CCRC’s. Fellowship Road provides access to the property from Allen Road. The majority of the Fellowship Village CCRC was constructed after various approvals granted by the Board in 1993, 1994 and 1998. Thereafter, the Board granted site plan approvals for porch enclosures and roof-mounted solar panels in 2009, expansion of the dining facilities in the existing community center in 2010, parking lot improvements in 2011, a significant expansion of the community center and health center in 2016, and construction of a building addition as well as other site improvements to the community and property in 2021. Most recently, at its September 20, 2022 regular meeting, the Planning Board memorialized the grant of amended approval, modifying certain conditions of the Board’s prior approvals in application #PB13-006A relative to the usage of the on-site theater. All of the Fellowship Village CCRC buildings on Lot 33 are currently served by the public sewer and public water systems.

3. The Proposed Development. As set forth above, the applicant proposes to merge currently vacant and largely wooded Lot 9, the 2.87-acre lot adjoining 72.569-acre Lot 33, and to construct on the portion of the merged property that was previously Lot 9 the proposed building, which will be a two-story structure with a total floor area of 3,402 square feet to serve as a residence building for staff of the Fellowship Village CCRC. The proposed building contains seven bedrooms and four bathrooms, and common facilities including a kitchen, dining room, laundry room, lounge and great room as well as a 180-square foot deck. Eight paved parking spaces including one ADA parking space are proposed off a driveway that connects to the existing Fellowship Village driveway, i.e., Fellowship Road, approximately 230 feet from Allen Road. The proposed development includes a sidewalk connection to Fellowship Village, seven light poles, and an underground stormwater management system to collect stormwater run-off. All utilities serving the proposed building, including public water and sanitary sewer, are proposed to be extended from the existing facilities at the Fellowship Village CCRC to the proposed building.

4. The Application and Requested Relief. As set forth above, the application requests conditional use approval and preliminary and final site plan approval along with certain exceptions from the site plan ordinance requirements to allow construction of the proposed development. Specifically, the application seeks the following site plan ordinance exceptions: (1) an exception from ordinance section 21-39.2, which requires one (1) on-site, off-street loading space for each building (49,999 square feet or less) requiring the receipt or distribution in vehicles of materials or merchandise, to allow no loading spaces; (2) an exception from ordinance section 21-41.3, which requires an average maintained horizontal

illumination in vehicular roadways of 0.4 footcandles, to allow for 3.4 footcandles; and (3) an exception from ordinance section 21-41.3, which requires an average maintained horizontal illumination in sidewalks of 0.2 footcandles, to allow for 5.0 footcandles.

5. Standards for Considering the Requested Ordinance Exceptions. N.J.S.A. 40:55D-51a and b provide that the Board, “when acting upon applications for preliminary [subdivision or site plan] approval, shall have the power to grant such exceptions from the requirements for [such] approval as may be reasonable and within the general purpose and intent of the provisions for [subdivision and site plan] review and approval . . . if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.” While neither “impracticable” nor “undue hardship” is defined in the MLUL, “undue hardship” has been defined in numerous land use and zoning cases in New Jersey. Our courts have held that to qualify for “c(1)” variance relief, the “undue hardship” at issue does not have to rise to the level of confiscation. If the ordinance provisions at issue “inhibit . . . the extent” to which the property can be used, our courts have held that “undue hardship” to warrant a “c(1)” variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). Thus, the standard for determining whether the literal enforcement of the ordinance requirement will exact “undue hardship” requires the Board to consider whether the literal enforcement of the requirement at issue will “inhibit the extent to which the property at issue can be used. Unlike “undue hardship,” however, “impracticable” has not been defined in any published land use or zoning case. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), “impracticability” for purposes of considering an exception under the MLUL should focus on the dictionary definition of “impractical,” which is the root of “impracticability.” The dictionary definition of “impractical” is “not wise to put into or keep in practice or effect”; an inability to deal “sensibly or prudently with practical matters.” Merriam-Webster’s Collegiate Dictionary (11th Ed. 2004). Thus, the standard for determining whether the literal enforcement of the ordinance requirement at issue is impracticable requires the Board to consider whether it is sensible or prudent or wise to insist on its literal enforcement in light of the peculiar conditions at issue.

6. Findings as to the Exception from Ordinance Section 21-39.2 Regarding Loading Spaces. As set forth above, ordinance section 21-39.2 requires one (1) on-site, off-street loading space for each building (49,999 square feet or less) requiring the receipt or distribution in vehicles of materials or merchandise, and the applicant seeks an exception to allow it to provide no loading space. The basis for the applicant’s proposal to provide no loading spaces for the proposed building is that no deliveries will be made to the proposed building as all deliveries will be made to the primary unloading area in the Fellowship Village campus. The Board finds that it is impractical to require the applicant to construct a loading space that will not be used, and it is imprudent to require the installation of the loading space for no purpose other than ordinance compliance, so that the applicant’s request for an exception from this requirement is reasonable provided that a condition is imposed and complied with which prohibits deliveries to be made to the proposed building by vehicles other than those belonging to Fellowship Village.

7. Findings as to the Exception from Ordinance Section 21-41.3 Regarding Vehicular Roadway Lighting Intensity. As set forth above, ordinance section 21-41.3

requires an average maintained horizontal illumination on vehicular roadways of 0.4 footcandles. The applicant seeks an exception to allow it to provide an illumination of 3.4 footcandles on the vehicular roadway. During the hearing, the applicant's engineering expert explained that, because the employees that will be housed in the new residence building work varying shifts, they will be traversing the parking lot and walkways at all hours of the day and night. Thus, the lighting coverage in the areas connecting the proposed building to the existing Fellowship Village campus must be adequate to provide for the safety of the employees who will be walking there in the dark. Ordinance section 21-41.2 requires nonglare lighting that is focused downward in parking areas and walkways. In order to comply with that requirement, while providing adequate lighting to the employees during the dusk and nighttime hours, the Board finds that the footcandle intensity of the nonglare downward facing lights must be of a higher intensity than ordinance section 21-41.3 allows. The Board finds that this conflict creates a hardship for the applicant. The Board additionally finds that the request is reasonable as the proposed lighting will not disturb members of the public as they are offsite and will not be able to see the vehicular roadway lights that are the subject of this application.

8. Findings as to the Exception from Ordinance Section 21-41.3 Regarding Sidewalk Lighting Intensity. The Board's findings as to the exception from ordinance section 21-41.3 regarding sidewalk lighting intensity is the same as the above findings regarding the vehicular roadway lighting intensity. Ordinance section 21-41.3 requires an average maintained horizontal illumination on sidewalks of 0.2 footcandles. The applicant proposes an illumination of 5.0 footcandles on the sidewalks. Again, because the employees that will be housed in the proposed building work varying shifts, they will be traversing the parking lot and walkways at all hours of the day and night. Thus, the lighting coverage in the areas connecting the proposed building to the existing Fellowship Village campus must be adequate to provide for the safety of the employees who will be walking there in the dark. Ordinance section 21-41.2 requires nonglare lighting that is focused downward in parking areas and walkways. In order to comply with that requirement while providing adequate light to the employees during the dusk and nighttime hours, the footcandle intensity of the nonglare downward facing lights must be of a higher intensity than ordinance section 21-41.3 allows. The Board finds that this conflict creates a hardship for the applicant. The Board additionally finds that the request is reasonable as the proposed lighting will not disturb members of the public who are offsite and will be unable to see the sidewalk lights that are the subject of this application.

9. Standards for Considering Conditional Use Review. N.J.S.A. 40:55D-67a provides that a zoning ordinance may provide for conditional uses which shall be granted by the Board if the applicant meets "definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness..." in the ordinance. The Board must thus determine whether the proposed conditionally permitted use complies with all conditional use requirements set forth in the ordinance. Moreover, pursuant to ordinance section 21-12.2, in considering any request for approval of a conditional use, the Planning Board shall give due consideration to the following: (A) Preservation of existing natural resources on the site pursuant to ordinance section 21-12.2.a; (B) Safe and efficient vehicular and pedestrian circulation, parking and loading pursuant to ordinance section 21-12.2.b; (C) Proposed screening, landscaping and locations of structures and exterior lighting pursuant to ordinance section 21-12.2.c; and (D) Exterior design of any proposed building(s) and the proposed development of the site as a whole shall conform as much as possible to surrounding

buildings and developments and to such development as is permitted by right within the zone pursuant to ordinance section 21-12.2.d. In determining the conformance of proposed buildings and development to existing buildings and development, ordinance section 21-12.2.d provides that the Board may consider such items as the use of building materials, color and fenestration, and building bulk and spacing. Ordinance section 21-12.2.d further provides that the necessity for such conformance may be mitigated by visual separation between existing and proposed buildings and development and, in any event, such conformance is not intended to discourage creativity, invention and innovation, and the conformance to any particular architectural style is not required. Finally, N.J.S.A. 40:55D-67b provides that the "review by the planning board of a conditional use shall include any required site plan review."

10. Standards for Considering Preliminary and Final Site Plan Review.

N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that the Board "shall" grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance provisions, the Board must grant approval. Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 219, 232 (1994). If the application does not comply with all ordinance requirements, the Board must engage in the following analysis.

a. First, where a site plan application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions, the Board then must review the application and site plan against all remaining ordinance requirements and grant approval if there is compliance with all such remaining requirements. If the application complies with all remaining zoning ordinance and site plan ordinance requirements, the Board must grant preliminary and final site plan approval.

b. Second, where a site plan application does not comply with all ordinance requirements, but a condition can be imposed requiring a change that will satisfy the ordinance requirements, the Board can either (a) grant site plan approval on the condition that the application and/or plans are revised prior to signing the plans to comply with the ordinance requirements, or (b) adjourn the hearing to permit the applicant the opportunity to revise the application or plans to comply with the ordinance requirements prior to the Board granting preliminary approval.

As the application requires exceptions from certain site plan ordinance requirements, the Board could not find that the application and site plans comply with all zoning and site plan ordinance requirements, so the applicant is not entitled to preliminary and final site plan approval. However, just because the application does not comply with all ordinance requirements does not mean the Board must deny approval. As set forth above, the Board must determine, after any exceptions have been granted from the ordinance provisions at issue, whether the application and site plans comply with all remaining applicable zoning and site plan ordinance requirements. If the application and site plans comply with all remaining ordinance provisions, then preliminary and final approval should be granted, subject to the imposition of conditions as will be discussed below. Conversely, if the application and site

plans do not comply with all remaining ordinance requirements, the Board must then determine whether any conditions can be imposed to bring the application and site plans into ordinance conformance. Only if the Board determines that no conditions can be imposed to bring the application and site plan into ordinance compliance should the Board deny preliminary and final approval.

Finally, even if all ordinance requirements are complied with by the site plans as submitted, or as will be revised in accordance with conditions, the Board cannot grant site plan approval unless the four essential elements of a development which are vital to the public health and welfare are determined to be feasible, and they are: stormwater management and drainage, sewage disposal, water supply, and safe traffic circulation. D'Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. Id.

11. Findings as to Conditional Use Review of the Proposed Development.

Provided that the exceptions from the site plan ordinance requirements identified above are granted, and provided further that the conditions set forth below are imposed and complied with, the Board finds that the application, site plans, and the other documents referenced above that have been submitted for approval, will comply with all applicable zoning ordinance regulations, including all conditional use standards, and all applicable remaining site plan ordinance requirements.

12. Findings as to Preliminary and Final Site Plan Review for the Proposed Development.

The Board's findings as to preliminary and final site plan review for the proposed development are similar to its findings as to conditional use review. Provided that the exceptions from the site plan ordinance requirements identified above are granted, and provided further that the conditions set forth below are imposed and complied with, the Board finds that the application, site plans, and the other documents referenced above that have been submitted for approval, will comply with all applicable zoning ordinance regulations, including all conditional use standards, and all applicable remaining site plan ordinance requirements. Further, provided that the conditions set forth below are imposed and complied with, the Board finds that all matters vital to the public health (water supply, sewage disposal, stormwater drainage, and safe traffic circulation) will be adequately provided for and are appropriately designed as part of the proposed development.

13. Ultimate Findings and Conclusions as to the Relief Requested. For all of the foregoing reasons, the Board's ultimate findings and conclusions are that the requested exceptions from the site plan ordinance requirements at issue, conditional use approval and preliminary and final site plan approval can and should be granted subject to the conditions below being imposed and complied with.

14. Imposition of Conditions. Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp.,

91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). See also, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Moreover, N.J.S.A. 40:55D-49a authorizes a 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 issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2019), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by Board’s experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON MARCH 21, 2023 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE CONDITIONS SET FORTH BELOW:

B. RELIEF GRANTED

1. Grant of Exception from Ordinance Section 21-39.2 Regarding Loading Spaces. Subject to the conditions set forth below, the Board hereby grants an exception from ordinance section 21-39.2, which requires one (1) on-site, off-street loading space for each building (49,999 square feet or less) requiring the receipt or distribution in vehicles of materials or merchandise, to allow no on-site, off-street loading spaces associated with the proposed building.

2. **Grant of Exception from Ordinance Section 21-41.3 Regarding Vehicular Roadway Lighting Intensity.** Subject to the conditions set forth below, the Board hereby grants an exception from ordinance section 21-41.3 which requires an average maintained horizontal illumination on vehicular roadways of 0.4 footcandles, to allow 3.4 footcandles on the vehicular roadways.

3. **Grant of Exception from Ordinance Section 21-41.3 Regarding Sidewalk Lighting Intensity.** Subject to the conditions set forth below, the Board hereby grants an exception from ordinance section 21-41.3 which requires an average maintained horizontal illumination on sidewalks of 0.2 footcandles, to allow 5.0 footcandles on the sidewalks.

4. **Grant of Conditional Use Approval.** Subject to the conditions set forth below, the Board hereby grants conditional use approval to allow use of the proposed building as staff housing for, and as part of, the Fellowship Village CCRC.

5. **Grant of Preliminary and Final Site Plan Approval.** Subject to the conditions set forth below, the Board hereby grants preliminary and final site plan approval to the site plans and other documents referenced above to allow construction of the proposed development.

C. **CONDITIONS**

1. **Revisions to Site Plans and Other Documents.** The applicant shall revise the site plans and other documents referenced above to the satisfaction of the Township Planner and the Board engineering expert in accordance with the comments set forth below. The revisions shall be made, and the site plans signed by the Board Secretary evidencing that the revisions have been made, no later than October 3, 2024 (which is one (1) year from the adoption of the within resolution on October 3, 2023). In the event that the applicant fails to revise the site plans and other documents as required and/or fails to obtain signatures on the site plans as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would have continued the hearing on an application for no more than a six (6) month period to provide the applicant with the opportunity to revise the site plans and other documents, and failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.) The required revisions are as follows:

a. **Revisions Emanating in the Memo to the Board from Bryce Good, PE, CPESC dated March 15, 2023 (only those comments that require revisions are set forth below):**

(6) Ordinance Section 21-23.1.b Drainage Design Regulations. The Drainage Statement shall be revised to address the rate of discharge from the property as determined for a one-hundred-year storm with a twenty-four-hour duration in accordance with ordinance section 21-23.1.b.

(9) Ordinance Section 21-27.2 Soil Erosion and Sediment Control Requirements. The applicant shall revise the Soil Erosion and Sediment Control Plan (Sheet 10) to address the following:

(a) The proposed silt fence shall be within the Limit of Disturbance (“**LOD**”) as its installation and removal constitutes disturbance.

(b) Erosion and Sediment (“**E&S**”) control shall be provided at the intersection of the proposed driveway with the existing road as grading will divert sediment laden water off site.

(c) E&S controls should be considered where the sanitary sewer is proposed to be constructed.

(d) E&S controls are required in the area of the removal of the existing gravel driveway.

(e) E&S controls shall be applied to the existing inlet on the eastern side of the proposed driveway due to the proximity of grading near this inlet.

(10) Ordinance Section 21-29 Construction Hours of Operation. Revise the site plans to reflect construction activities shall only take place between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturday. No construction activities shall take place on Sundays or holidays.

(11) The following details shall be added to the plan:

(a) Ordinance Section 21-35.6 Storage and Disposal of Waste. A detail shall be provided to show the proposed enclosure to the waste storage area in order to determine that no materials or wastes will be transferred off the lot by natural causes or forces, nor be deposited which can cause an underground aquifer to fail to meet applicable state water quality standards.

(b) Ordinance Section §21-40.3 Location. A detail shall be provided to show that the outdoor solid waste storage facility is visually screened from elsewhere on the project and from all property lines. Storage of waste which produces a discernable odor shall be within the building.

(13) Ordinance Section 21-41.2 Lighting Parking Areas and Walkways. The lighting plan shall provide for nonglare, shoebox-type lights focused downward, except one fixture near the main driveway shall be a nonglare, colonial-type fixture to match the existing fixtures on the property.

(17) Applicant shall submit a stormwater management plan which shall demonstrate compliance with the stormwater management requirements set forth in ordinance sections 21-42.4 and -42.9 including but not limited to:

(a) The development shall incorporate a maintenance plan for the stormwater management measures per the requirements of ordinance section 21-42.4A. The

plans shall be revised to include the maintenance plan. Reference ordinance section 21-42.10 for additional requirements associated with this.

(b) Design standards for stormwater management measures of ordinance section 21-42.4i shall be met.

(c) The development shall include measures to meet the groundwater recharge, storm water runoff quality, and storm water runoff quantity requirements of ordinance section 21-42.4p, q and r as well as the green infrastructure standards of ordinance section 21-42.4o.

(19) Revise the drainage statement as follows:

(a) The explanation of the increase in impervious cover shall provide clarity that the existing residence and associated driveway are being removed.

(b) Evidence of completing infiltration testing shall be submitted with the revised stormwater analysis.

(c) A description as to why the test pit locations and the location of the proposed infiltration system do not coincide shall be provided.

(d) An explanation as to the elevation of bedrock identified in the test pits and the elevation of the proposed infiltration system shall be provided. It appears the bottom of the infiltration system will be within or very near the elevation of the bedrock, thus limiting infiltration.

(20) Ordinance Section 21-43.3 Shade Trees. Trees 30 and 31 as shown on Sheet 5 are shade trees from previous approvals for Fellowship Village. These trees, no matter their size, must be included in the tree replacement numbers.

(21) Ordinance Section 21-43.4 Buffer Areas. The existing stone driveway shall be removed and restored to a vegetated state. The existing driveway is located in the buffer along the adjoining parcel, lot 8. Therefore, landscaping used for buffering purposes in this area shall be compatible in scale and character with the surrounding prevailing landscape.

(22) Relocate topsoil stockpile to a location acceptable to the Township planner and Board engineer. All access for construction access shall be from Fellowship Drive. No access for construction shall be from Allen Road except to remove the driveway and to plant vegetation.

(23) Ordinance Section 21-45.3b.1(c) Tree Identification Plan. The plans shall be revised to identify the species of all trees 30 feet beyond the Limit of Disturbance.

(26) Sheet 1 – Cover Sheet. Provide a lot consolidation plan and include it in the Drawing index to clearly show that Lot 9 is being combined with Lot 33.

(27) Sheet 4 - Overall Site Plan (also Sheet 6). Note 9 shall be revised such that any items noted as proposed are only applicable to this application.

(28) Sheet 4 - Overall Site Plan (also Sheet 6). Note 15 shall be revised to include the survey drawing title, latest drawing date, and who prepared the drawing.

(29) Sheet 4 - Overall Site Plan (also Sheet 6). Note 26 shall be revised to include Township requirements if they differ from the Manual on Uniform Traffic Control Devices.

(30) Sheet 4 - Overall Site Plan (also Sheet 6). Note 29 shall be revised to include the architectural drawing title, latest drawing date, and who prepared the drawing.

(31) Sheet 4 - Overall Site Plan (and others). The proposed driveway shall be aligned with the existing driveway on the opposite side of Fellowship Road.

(32) Sheet 5 – Demolition and Tree Removal Plan. Revise the plan to note the removal of the existing driveway, residence (or what remains of the residence), residential appurtenances, and any utilities associated with the existing residence. The LOD shall be revised to include all areas of disturbance.

(33) Sheet 5 – Demolition and Tree Removal Plan. Note 15 references a geographical report. The report shall be provided to the Township for review, or the note itself revised if no report exists.

(35) Sheet 5 – Demolition and Tree Removal Plan. The silt fence lines (both types) appear to be in conflict or are redundant. Revise the plan to make the silt fence lines consistent.

(36) Sheet 5 – Demolition and Tree Removal Plan. Revise the legend to indicate the type (deciduous or coniferous) of tree to remain.

(37) Sheet 6 – Site Plan. The existing curb at the northern end of the proposed crosswalk shall be noted as needing to be converted to a depressed curb and a detectable warning surface shall be added.

(38) Sheet 7 – Grading Plan. Revise Note 11 to remove references to “basin”.

(39) Sheet 8 – Utility Plan. The proposed culvert overflow from proposed inlet #11 shall be shown and the inverts labeled.

(40) Sheet 8 – Utility Plan. The existing Utility Notes do not appear to be applicable to this application. They shall be removed or revised to be more applicable to the proposed connections to the existing utilities.

(41) Sheet 8 – Utility Plan. The drainage notes shall be revised based upon other comments in this report and as necessary to be applicable to the application.

(42) Sheet 9 - Landscape and Lighting plan. Note 3 under the Lighting Notes shall be removed as is not applicable to this application.

(43) Sheet 9 - The tree planting schedule and plan shall be revised to the satisfaction of the Board engineering expert.

(44) Sheet 9 - The location of the proposed shade trees as identified in the detail on Sheet 13 shall be identified on the plan.

(45) Sheet 11 - Inlet Protection details shall be provided to coincide with the filters shown on Sheet 10 and those added per comment 9. Also, Note 15 of the Soil Erosion & Sediment Control Notes shall coincide with the detail(s).

(46) Sheet 11 – Sequence of Construction shall be revised to include demolition of the existing features.

(47) Sheet 11 – Phase 3 of the Sequence of Construction shall be revised as no detention basin is proposed.

(48) Sheet 11 – Note 11 of the Soil & Sediment Control Notes and the Stabilized Construction Entrance detail conflict with each other. Revise to provide consistency.

(49) Sheet 11 - The permanent seed mixture shall match the previously approved and applied mixtures for the other areas of the overall development.

(50) Sheet 12 – The curb detail shall be revised to be a Belgian block curb to match the curb utilized throughout the overall development.

(51) Sheet 12 – The Standard Duty Asphalt Pavement Detail references a geotechnical report. The report shall be provided to the Township for review, or the note revised, if no report exists.

(52) Sheet 13 – The species of the tree and caliper should be identified on the Street Tree Planting Detail.

(53) Sheet 13 - The Street Tree Planting Detail references to grate and frame shall be removed as the existing street trees do not utilize these structures.

b. Revisions Emanating in the Memo to the Board from David Schley, PP, AICP dated March 3, 2023 (only those comments that require revisions are set forth below):

(1) Sheet 1 – Revise the Drawing Index to include the architectural plan and the two surveys.

(2) Sheet 3 - Add a note stating the site contains no slopes of 15% or greater. Alternatively, omit sheet 3 and add the note to sheet four.

(3) Sheet 4 - Add a note referencing the November 25th, 2022 report by Eastern States Environmental Associates, which confirms the absence of wetlands and wetlands transition areas on lot 9.

(4) Sheet 4 - Add a note stating the applicant shall file a deed merging existing Lot 9, Block 9401, with the existing Lot 33, Block 9301, and the new lot shall be known as Lot 33.01, Block 9301.

(5) Revise the tree symbols in the Demolition Plan Legend to differentiate between deciduous trees and coniferous trees, as shown on the survey.

(6) Sheet 5 – Revise the Tree Replacement Calculations to reflect that only trees equal to or greater than 10 inches caliper are required to be replaced, and to reflect that the entire tree replacement requirement shall be satisfied by planting qualifying trees on the property. The additional trees necessary to satisfy the tree replacement requirement shall be shown on the Landscape and Lighting Plan (sheet 9) if located on existing lot 9 and on a new plan sheet if located on existing lot 33.

(7) Sheet 5 - Add the following tree replacement/preservation notes:

(a) All construction activity shall comply with the tree removal and protection standards of ordinance section 21-45.

(b) If during construction, it is determined by the applicant and the Township Engineer that a tree designated for removal can be preserved, said tree shall be protected in accordance with Township standards. Appropriate credit shall be given toward the tree replacement requirements if the tree is preserved.

(c) If during construction, it is determined by the Township Engineer that a tree designated for preservation cannot be protected in accordance with Township standards, the tree shall be removed and replacement trees shall be required.

(8) Sheet 5, etc. – Revise the plans to show the following:

(a) Show that the existing stone driveway and all other existing structures associated with the prior dwelling, including the wired garden, driveway chain posts and overhead utility service lines and poles, shall be removed from the site.

(b) Show that the existing utility pole on adjoining lot 8, which is one of two poles identified on the plans as #NJ999BV, shall be removed, unless this pole serves a property other than lot 9 or is otherwise required by the utility provider to remain.

(c) Add a note specifying how all areas of demolition/removals, and all areas where prior disturbance has occurred, shall be revegetated.

(9) Sheet 5, etc. – Revise the plans to show the following:

(a) Show that the existing stone driveway and mailbox shall be removed from the Allen Road right-of-way and the area restored to grass (topsoil/seed/sod).

(b) Show that the existing flush granite block curb shall be replaced with full height granite block curb, consistent with the rest of the Allen Road frontage, subject to approval by Somerset County.

(10) Sheet 6 – Add dimensions to the proposed trash enclosure to show that it is adequately sized.

(11) Sheets 6 & 12 – Revise the plan and details to show that the handicapped parking space shall have an 11-foot-wide stall and a 5-foot wide aisle.

(12) Sheet 6, etc. – Revise the plans to show the proposed flush curb/ramp where the proposed crosswalk intersects the existing sidewalk on the east side of Fellowship Road.

(13) Sheet 6 – Revise the plans to show the location(s) of proposed air conditioner condensers next to the HVAC/utility room and add a note that says: “no generator.”

(14) Sheet 7 – Add to the ADA notes: “Accessible routes shall comply with the New Jersey Uniform Construction Code. In the event an improvement designed for handicapped accessibility is not subject to the NJUCC, the applicant’s engineer shall certify that the improvement has been constructed in compliance with all applicable standards and guidelines of the Americans with Disabilities Act, prior to final approval by the Township.”

(15) Sheet 8 – Add a note stating proper construction of the stormwater management improvements shall be certified by the applicant’s engineer prior to final approval by the Township.

(16) Sheet 9 – Clarify the mounting height (the measurement from ground level to the center of the light source) of the proposed light fixtures. The lighting schedule specifies 10-feet and the light pole detail specifies 12-feet max. Both should either provide for 10-feet or 12-feet.

(17) Sheet 9 – Revise the westerly light fixture at the end of the parking aisle to include a house-side shield.

(18) Sheet 9 – Add a note stating the hours of exterior illumination shall be from dusk to dawn.

(19) Sheet 9 – Revise the plant schedule to include at least one 3- to 4-inch caliper shade tree, to comply with ordinance section 21-43.3.

(20) Sheet 9 – The applicant shall add evergreen trees along the west end of the parking area and/or in the open areas formerly occupied by the prior dwelling and driveway, for the purpose of enhancing the screening between the proposed development and the adjoining residence on lot 8 to the west.

(21) Sheet 10 – Relocate the proposed topsoil stockpile to a location within the proposed limit of disturbance, to avoid the likelihood that construction activities will result in disturbance to unprotected existing trees.

(22) Sheet 12 – Provide details for the proposed trash enclosure and granite block curb. Identify where concrete curb is proposed or omit the concrete curb detail.

(23) Sheet 13 – Amend the tree planting detail to specify trees shall be staked, and to reflect that the detail applies to all trees (not only street trees).

c. **Revisions Emanating from the Memo to the Board from Frank D’Amore, Jr., Fire Official dated March 7, 2023 (only those comments that require revisions are set forth below):**

(1) The proposed fire hydrant shall be relocated to the main driveway, in a location acceptable to the Township Fire Official.

(2) The proposed fire department connection shall include a red light and shall be relocated out of the collapse zone, to a location acceptable to the Township Fire Official.

(3) A Knox Box shall be provided in a location acceptable to the Township Fire Official.

(4) The proposed building shall be sprinklered.

(5) No Parking/Fire Lane pavement striping and/or signage shall be provided to the satisfaction of the Township Fire Official.

(6) The Fire Service Plan shall be revised to show the turning movements of a Tower 40 vehicle, and shall show sample vehicles occupying the parking area, to the satisfaction of the Township Fire Official.

d. **Revisions Emanating in the Memo to the Board from Alice Smyk, Chairperson, Bernards Township Environmental Commission dated March 2, 2023 (only those comments that require revisions are set forth below):** In as much as there is a proposed increase in impervious coverage of 2,673 square feet with a disturbance of 18,570 square feet with on-site recharge, the applicant shall revise the drainage statement referenced above to provide calculations for the recharge storage.

e. **Revisions Emanating from Comments Made During the Public Hearing on March 21, 2023:**

(1) The rear façade of the proposed building, which faces Allen Road, shall be enhanced with architectural details to more resemble a front façade, to the satisfaction of the Board planning expert.

(2) The Demolition and Tree Removal Plan (sheet 5) shall be revised to show all existing trees, including the existing trees that are shown only on the submitted survey, to the satisfaction of the Board engineering expert.

(3) The plantings proposed as screening along the adjoining residence on lot 8 to the west shall be installed during the first planting season after construction has started, to the extent practicable.

(4) Upon completion of the proposed development, the remaining wooded areas on existing lot 9 shall remain undisturbed unless further improvements in these areas are approved by the Board. The applicant shall not create any paths or otherwise encourage the use of these wooded areas, and shall inform new employees during the orientation process that adjoining lot 8 is not part of the Fellowship Village campus and not open to the public.

(5) The site plans shall be revised to show eight (8) additional parking spaces to be “banked” for potential future construction. The banked spaces shall be designed as grass paver spaces similar to the grass paver spaces located within the existing Fellowship Village campus. The revised site plans showing the banked parking spaces shall include complete dimensioning and proposed grading, however, do not need to show at this time the required incidental changes relating to stormwater management, tree removal/replacement, landscaping, lighting and other details. Those additional plans/details shall comply with the Land Development Ordinance and the within resolution and shall be submitted for review and approval by the Township engineer and Township planner prior to any land disturbance related to the banked parking spaces. The banked parking spaces shall be constructed within nine (9) months of the applicant receiving written notice from the Township Engineer that a need for the spaces exists, or may be constructed earlier at the applicant’s discretion.

2. Design, Construction and Location of Improvements. The applicant shall design, construct and locate the proposed development in substantial conformity with the site plans referenced above after they have been signed by the Board Secretary as well as to the architectural drawings in the record and the exhibits submitted into evidence during the hearing.

3. Landscaping. All landscaping, as installed, shall conform to and be in accordance with the landscaping plan approved and signed by the Board, and which landscape plan shall include any and all the landscaping changes required by condition #1 above. Prior to the issuance of a permanent certificate of occupancy, completion or compliance (whichever is applicable) and prior to the release of any performance guaranty, the landscaping shall be installed and a two (2) year maintenance guaranty in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer, shall be posted with the Township. If the applicant applies for a certificate of occupancy during a non-planting season, the applicant may obtain a temporary certificate of occupancy without installation of the landscaping but if and only if the applicant posts a performance guaranty in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season and further guaranteeing the subsequent posting of a two (2) year maintenance guaranty. The installed landscaping shall be subject to inspection by a Board appointed landscaping committee. The applicant shall notify the Township Engineer and Township Planner upon completion of the landscaping to initiate scheduling of the inspection. The

owner of the adjoining residence on lot 8 to the west shall be provided with notice of the inspection at least 14 days prior to the inspection date so that they can be present for the inspection and offer input to the committee. The applicant shall provide additional plantings and/or make other changes to the landscaping as deemed necessary and appropriate by the landscaping committee to better achieve the purposes of the landscaping as set forth in the within resolution, including specifically the provision of adequate screening of the proposed development from the adjoining residence on lot 8 to the west and from Allen Road. If deemed necessary and appropriate by the committee, after the applicant has proposed its landscape planting locations, the landscape committee may require the applicant to also install up to 200 linear feet of 6-foot-high solid wood fencing consistent with the fencing installed by the applicant along lot 8 in conjunction with prior Board approvals, to the extent such fencing is necessary to fill in gaps in natural vegetation and proposed plantings. Any dispute(s) concerning the determinations of the landscaping committee 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 Engineer and Township Planner. The applicant shall have a continuing obligation to maintain all landscaping in perpetuity for its intended purpose (i.e., for screening if planted for buffering purposes or for aesthetics if planted for enhancement purposes), which shall include but not be limited to repairing and/or replanting to the satisfaction of the Township Planning / Engineering Department any and all landscaping that becomes damaged and/or dies. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not be required in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. Board landscape architectural expert) is necessary to fulfill the intent of this section, all costs and expenses of such outside experts shall be reimbursed to the Township by the applicant.

4. Enforcement and Maintenance of Parking. The applicant shall strictly monitor and enforce parking as permitted and reflected on a signed site plan. This means that parking shall be permitted only in those areas and in those spaces designated on the site plan for same. The owner of the property shall include provisions in all leases to this effect. The applicant shall identify on the site through pavement markings and signage (as approved by the Township Engineer) all parking spaces and fire lanes/zones. The applicant shall have a continuing obligation to maintain all parking areas, which shall include but not be limited to repainting and reinstalling signage for all required spaces. The proposed development shall not include an electric vehicle charging station unless the location and details are approved by the Township Fire Official.

5. Night-Light Test. All lighting, as installed, shall conform to and be in accordance with the lighting plan approved and signed by the Board, and which lighting plan shall include any and all the lighting changes required by condition #1 above. There shall be a night-light test conducted by a Board appointed lighting committee. The applicant shall notify the Township Engineer and Township Planner upon completion of the lighting to initiate scheduling of the night-light test, which shall take place prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable). The owner of the adjoining residence on lot 8 to the west shall be provided with notice of the night-light test at least 14 days prior to the test date so that they can be present for the test and offer input to the committee. The purpose of the night-light test is to assure adequate lighting throughout the site for safety purposes while safeguarding neighboring property owners and

the traveling public from glare, unnecessary brightness and glow. As a result of the night-light test, and prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable), the applicant shall make changes to the lighting as deemed necessary and appropriate by the lighting committee to better achieve the purposes of the lighting and/or mitigate negative impacts of the lighting as set forth in the within resolution. Any dispute(s) concerning the determinations of the lighting committee 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 Engineer and Township Planner. The applicant shall have a continuing obligation to maintain all lighting in perpetuity for its intended purpose (i.e., for safety and/or security as well as to avoid night glow and light trespass), which shall include but not be limited to repairing and/or installing new fixtures and/or bulbs to the satisfaction of the Township Planning / Engineering Department. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not be required in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. a lighting expert) is necessary to fulfill the intent of this section, all costs and expenses of such outside experts shall be reimbursed to the Township by the applicant.

6. Deliveries. No deliveries shall be made to the proposed building by vehicles other than those belonging to Fellowship Village.

7. Best Management Practices Regarding Wetlands and Surface Water. The following best management practices shall be implemented:

(a) Best management practices to protect the freshwater wetlands and surface water body on the property shall be implemented during site work (sediment and erosion controls) and post-construction (organic lawn care, protect and preserve natural soil and vegetation).

(b) Stormwater best management practices shall be implemented during site work and as part of the final site grading and restoration.

(c) Best management practices to preserve and protect trees shall be implemented during site work.

8. Submission of Digital Plans. The applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department. [This condition is one of the Board's standard conditions.]

9. Call for Engineering Inspections. The applicant shall call to coordinate all inspections with the Engineering Department 24-hours prior to the start of construction as related to grading and drainage improvements on the property and/or within the streets and/or rights-of-way.

10. Easements, Dedications, Conveyances and Restrictions. Any easements, dedications and conveyances shown on the plans and/or required by the within conditions, including but not limited to the required stormwater management easement for the proposed stormwater infiltration improvements, shall be made and are subject to approval by the

Township Attorney (who shall have the option in his discretion of preparing the documents himself) and the Township Engineer and shall then be recorded with the Somerset County Clerk. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description and a map of the easement, dedication and/or conveyance area. A stormwater management easement which shall be consistent with the easements previously provided for the drainage improvements on Lot 33 shall be required and shall include the SWFM manual, which shall be subject to review and approval by the Board Engineering Expert. The applicant shall be required to include all information required by ordinance section 21-42.9. All such documents shall be recorded prior to issuance of any zoning and/or construction permits for any aspect of the proposed development and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township. Proof of the access easement for the removal of the overhead electric line that originates on Lot 8 shall be provided to the Board's attorney for review and approval. Evidence of proper coordination with the County for access into their Right-of-Way for the removal of the driveway entrance shall be provided to the Township Engineering Department.

11. Escrow Fees. Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 10 days of the adoption of the within resolution, within 10 days of written notice that a deficiency exists in the escrow account, prior to signing the plans, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). [This condition is one of the Board's standard conditions.]

12. Development Fee. A development fee, as applicable, shall be required in accordance with ordinance section 21-86.

13. Pre-Construction Meeting. The applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity. [This condition is one of the Board's standard conditions.]

14. Time to Obtain Construction Permits and Commence and Complete Construction. The applicant shall apply for and obtain a construction permit by October 3, 2025 (which is within two (2) years of the date the within resolution is adopted on October 3, 2023). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the within approvals shall automatically expire and become null and void. The applicant shall have one (1) year from the date of issuance of the first construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one (1) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy, completion or approval (whichever is applicable) is not obtained, the within approvals shall automatically expire and become null and void.

15. Deed Merging Lot 9 with Lot 33. The applicant shall record a deed merging existing Lot 9, Block 9401 into existing Lot 33, Block 9301. The deed shall identify the new consolidated lot as Lot 33.01, Block 9301 and shall be subject to review and approval by the Township Engineer and the Township Attorney and shall be recorded in the Office of the Somerset County Clerk prior to the issuance of any zoning and/or construction permits.

16. As-Built Plans. Pursuant to ordinance section 21-26.3, upon construction of the utilities, the applicant shall provide the Township with at least four copies of a final “As Built” plan showing the installed locations.

17. Previous Conditions Remain in Effect. The property shall remain subject to all conditions of prior Planning Board approvals not eliminated or modified by the approval of this application.

18. Subject to Other Governmental Agency Approvals and Permits. The within approvals are subject to and shall be conditioned upon the applicant obtaining approvals and/or permits from all applicable agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

a. **Somerset-Union Soil Conservation District.** Somerset - Union Soil Conservation District certification / approval of the soil erosion and sediment control plan. A copy of the certification shall be submitted prior to issuance of any zoning and/or construction permits for any aspect of the proposed development.

b. **Somerset County Planning Board.** Somerset County Planning Board unconditional approval of all aspects of the proposed development within its jurisdiction. A copy of Somerset County Planning Board unconditional site plan approval shall be submitted prior to issuance of any zoning and/or construction permits for any aspect of the proposed development.

c. **NJDEP.** NJDEP approval of all aspects of the proposed development within its jurisdiction.

d. **Bernards Township Sewerage Authority.** Bernards Township Sewerage Authority approval of all aspects of the proposed development within its jurisdiction, including an increase in sewer allocation to accommodate the proposed development.

e. **New Jersey American Water.** Approval / permits from New Jersey American Water for an increase in water to accommodate the proposed development.

19. Subject to Other Approvals and Laws Not Specifically Referenced Above. 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 MARCH 21, 2023 TO GRANT CONDITIONAL USE APPROVAL AND PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH EXCEPTIONS:

THOSE IN FAVOR: PIEDICI, BAUMANN, CRANE, CUOZZO, DAMURJIAN, LADYZINSKI, MANDUKE, MASTRANGELO & SEVILLE.

THOSE OPPOSED: NONE

The above approval resolution was adopted by motion duly made and seconded on October 3, 2023 by the following vote of Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Piedici	X			
Baumann			X	
Crane	X			
Cuozzo	X			
Damurjian	X			
Eorio			X	
Ladyzinski	X			
Manduke				X
Mastrangelo	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 October 3, 2023.

Cyndi Kiefer

CYNDI KIEFER, Board Secretary