

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v2  
Regular Meeting  
September 9, 2020

### **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:32 PM.

### **FLAG SALUTE**

**OPEN PUBLIC MEETINGS STATEMENT** – Chairman Breslin read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 9, 2020 and was electronically mailed to all those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township Board of Adjustment. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM.

### **OATH OF OFFICE**

Mr. Warner administered the Oath of Office to Tyler Seville as Alternate #1, filling the unexpired two-year term of X. Paul Humbert, expiring 12/31/20. Mr. Seville thanked the Board for the opportunity to serve.

### **ROLL CALL:**

Members Present: Breslin, Cambria, Eorio, Genirs, Juwana, Kraus, Pochtar, Seville  
Members Absent: Tancredi  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Ms. Pochtar, seconded by Ms. Genirs, all eligible in favor and carried, the absence of Mr. Tancredi was excused.

### **APPROVAL OF MINUTES**

August 5, 2020 – Regular Session– On motion by Mr. Eorio, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as revised. Abstention for absence: Genirs, Juwana, Seville

### **APPROVAL OF RESOLUTIONS**

McCrone, Robert S. & Susan M.; ZB20-011; Block 1302, Lot 26; 55 Decker Street; Bulk Variances (approved) – Mr. Kraus moved approval of the resolution as drafted. Mr. Eorio seconded.

Roll call: Aye: Breslin, Cambria, Eorio, Kraus, Pochtar  
Nay: NONE  
Abstain: Genirs, Juwana, Seville

Motion carried.

Lincoln Avenue Gospel Hall; ZB20-006; Block 8903 Lot 36; 3265 Valley Road; Preliminary/Final Site Plan, Conditional Use Variance (d-3), Bulk Variances (approved) – Mr. Kraus moved approval of the resolution as drafted. Mr. Eorio seconded.

Roll call: Aye: Breslin, Cambria, Eorio, Kraus, Pochtar  
Nay: NONE  
Abstain: Genirs, Juwana, Seville

Motion carried.

Mr. Kraus recused himself from hearing the next application and left the dais.

**COMPLETENESS AND PUBLIC HEARING** (continued from 07/08/2020)

Heath, Christopher & Renee; Block 10704, Lot 42; 21 Old Stagecoach Road; Elimination of Condition, Bulk Variance; ZB20-007

Present: Christopher & Renee Heath, Applicants  
Michael J. Lipari, Esq., attorney for the Objector, Hills Highlands  
Master Association Inc.

Mr. Warner gave a brief summary of what had transpired during the 07/08/2020 meeting. He noted that the Applicants are seeking to eliminate a condition from previous resolutions requiring that they obtain an easement from the owner of Block 10704, Lot 25, the Hills Highlands Master Association, Inc. (HHMA) for a driveway constructed over that lot to their house in order to obtain a Certificate of Occupancy. The HHMA, represented by Michael J. Lipari, Esq., attorney with *Cutolo Barros LLC*, Freehold, NJ, objected to the application in letters dated 05/28/2020 and 07/03/2020 citing flawed public notice among other jurisdictional issues. The Heaths were given the opportunity to respond to the objections (which they did in a letter dated 08/05/2020), to re-notice and/or to negotiate further with the HHMA to obtain a voluntary easement.

Christopher and Renee Heath were duly sworn by Mr. Warner. Mrs. Heath confirmed that no further notice was served or published since the original notice in May and testified that she and Mr. Heath had tried unsuccessfully to reach an agreement with Mr. Lipari. She also confirmed that she and Mr. Heath had initiated proceedings a few years ago to have a court determine whether there is or should be an easement over Lot 25 however their case was dismissed. Two motions to reinstate the case were also denied. Mr. Warner noted that the Applicants had the option of filing a new case in court against the HHMA or against Somerset County which owns a separate lot (Block 901 Lot 1) that could also be used for access to the Heath's property.

Mr. Lipari stated that since the notice had not been corrected, all the points in his letters were still valid. In addition, he pointed out that on the application form itself, there is a section for the signature of a property owner who is not the applicant. Since the application involves property owned by the HHMA in addition to that which is owned by the Heaths, and since the HHMA had not signed that section, the Heaths were not authorized to make the application and the Board does not have the jurisdiction to hear it. Also, since the application involves Lot 25, notice should have been served to all property owners within 200 feet of both Lot 42 and Lot 25.

Citing case law, Mr. Warner stated that the Applicants need permission to use property they don't own either from the property owner or through a court ordered judicial easement. He then reviewed the resolution's original condition of approval and subsequent modifications noting that each gave the Applicants the option to seek a judicial easement or to seek permission voluntarily however the condition remains unsatisfied.

Mrs. Heath testified that she felt the notice was sufficient since for the previous proceedings before the Board, she had served notice only for her property. She stated that this property had been in her family since the 1970's and for decades prior to the fire that destroyed the original house, they had been able to use both the Somerset County property and the HHMA property (owned by Pulte Home Corp. at the time) as a means to access.

Mr. Lipari stated that the prior home did not encroach on the HHMA's property since the driveway was on the other side of the Heath's property at that time.

Citing case law, Mr. Warner opined that the notice was defective since it was not served to the property owners within 200 feet of *both* Lot 42 and Lot 25. Mr. Lipari added that the notice itself was misleading because it stated that the condition was no longer needed since Lot 42 is on a private road however no easement for that road exists on Lot 25.

Even if those deficiencies were cured, Mr. Warner opined that the Board still would not have authority to approve the relief requested because the Board would be, in effect, granting an easement over Lot 25 which can only be done voluntarily or through judicial order. When the Board granted the original application in 2013 for construction of the

house, the approvals were contingent on the applicants obtaining easements from Somerset County and/or the HHMA (Pulte Home Corp.).

Finally, Mr. Warner concluded by stating that although the deficiencies in noticing and in the application could be cured, the remaining issue regarding the Board's lack of authority to grant an easement, could not.

After deliberating, the Board concluded that it did not have the jurisdiction to hear the application. Ms. Pochtar moved to direct the Board Attorney to draft a resolution memorializing the Board's decision. Mr. Juwana seconded.

Roll call:       Aye:           Breslin, Eorio, Juwana, Pochtar  
                  Nay:           NONE  
                  Ineligible:   Due to Absence: Cambria, Genirs, Seville

Motion carried.

Mr. Kraus returned to the dais.

### **COMPLETENESS AND PUBLIC HEARING**

Trinks, Uwe P.; Block 11601, Lot 30; 50 Long Road; Bulk Variances; ZB20-012

Present:       Uwe P. Trinks, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicant and the Board's Professionals were duly sworn.

Uwe P. Trinks, Applicant residing at 50 Long Road, testified that in order to construct a two-story addition with an attached sunroom and to enlarge an existing deck, variances for minimum required side yard setback and minimum required rear yard setback are required. He explained that the property is long and narrow, and that because of the topography, the house is situated close to the side property line. In 2002, the Board approved variances permitting an addition which further reduced the pre-existing nonconforming side and rear yards however, the current proposal does not further exacerbate that condition. Finally, he stated that the nearest house was hundreds of feet away and that he had heard no negative comments from any neighbors about the proposal.

Mr. Schley noted that the house was built prior to the 1999 zoning amendments which increased the minimum required side yard, combined side yard and rear yard setbacks and confirmed that the new addition and deck expansion would not further encroach into the setbacks.

Mr. Trinks addressed the comments in Mr. Schley's memo dated 08/26/2020 and Mr. Quinn's memo dated 08/31/2020 and confirmed that he had taken the photos submitted with the application. He stipulated to keeping the deck open and clarified that the sunroom has foldable glass walls.

Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, that portion was closed.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(1)" or "hardship" variances. Ms. Genirs moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the application for variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Kraus seconded.

Roll call:       Aye:           Breslin, Cambria, Eorio, Genirs, Kraus, Pochtar, Seville  
                  Nay:           NONE

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Sands, Stephen C. & Laura K.; Block 1204, Lot 20; 141 Washington Avenue; Bulk Variances; ZB20-013

Present: Stephen C. & Laura K. Sands, Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants and the Board's Professionals were duly sworn.

Stephen C. Sands, Applicant residing at 141 Washington Avenue, testified that in order to install a louvered roofing system over an existing open deck, variances for minimum required rear yard setback and maximum allowable lot coverage are required since the deck would now be considered a covered deck. He stated that the lot itself is less than half of what is required and confirmed that he had taken the pictures submitted with the application.

Mr. Sands explained the roof has an automated system that allows the louvers to open and close. He noted that the louvers would be open during the winter since the roof could not support snow. It also has a gutter system which will be tied into the existing system and he stipulated to leaving the structure open on the sides. Finally, he confirmed that he had not received any negative feedback from the neighbors he had spoken to about the project.

Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, that portion was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" variances. Ms. Pochtar moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the application for variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Kraus seconded.

Roll call: Aye: Breslin, Cambria, Eorio, Genirs, Kraus, Pochtar, Seville  
Nay: NONE

Motion carried.

#### **COMPLETENESS AND PUBLIC HEARING**

Becht, Derek J. & Victoria M.; Block 3801, Lot 16; 26 Normandy Court; Bulk Variances; ZB20-014

Present: Stephen E. Parker, PE, PP, Engineer and Planner for the Applicants  
Derek J. Becht, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicant, Mr. Parker and the Board's Professionals were duly sworn.

Derek J. Becht, Applicant residing at 26 Normandy Court, testified that he proposes to construct an enclosed/screened porch adjoining an existing deck on the rear of his house, and variances for minimum required rear yard setback, minimum required side yard setback for sheds and maximum permitted lot coverage are required. He stated that even though the lot is undersized, because of the existing foliage, none of the neighboring properties are visible.

Mr. Schley stated that the existing deck is nonconforming, as are the locations of the existing sheds. Mr. Becht testified that the deck and sheds were present when he purchased the house and stipulated to maintaining the deck as an open deck. He noted that the sheds would be located in the driveway if they were conforming and stipulated that they would not be increased in size. Finally, he stated that he had not discussed the project with any of his neighbors. Mr. Parker stated that he had taken the pictures submitted with the application.

Mr. Quinn noted that because of the topography of the property, the runoff from the proposed improvements will be directed towards the front and not impact the adjacent lots. He also noted that the overall exceedance in impervious cover would exempt the project from the Township's stormwater management requirements.

Chairman Breslin opened the hearing to the public for questions or comments. Hearing none, that portion was closed.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for both "c(1)" hardship" variances and "c(2)" or benefits outweigh detriments" variances. Ms. Genirs moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the application for variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

Roll call: Aye: Breslin, Cambria, Eorio, Genirs, Kraus, Pochtar, Seville  
Nay: NONE

Motion carried.

### **2019 ANNUAL REPORT AND RECOMMENDATIONS**

Mr. Warner stated that the Municipal Land Use Law (MLUL) requires that the Board conduct a review of its decisions on applications and prepare and adopt by resolution a report on its findings. This report, which also includes the Board's recommendations, if any, for zoning ordinance amendments or revisions is to be submitted, on at least an annual basis, to the Planning Board and to the Township Committee. He noted that the two (2) memos submitted by Mr. Schley gave a summary of the applications made along with a detailed review of lot coverage variance applications over the past few years and an explanation of the Township Committee's reasoning as to why lot coverage numbers were not changed.

Mr. Schley gave a brief overview of the information in his memos, noting that there has been an increase in lot coverage applications in recent years. A discussion ensued about potential reasons for the increase. Chairman Breslin opined that although the *types* of cases the Board has been hearing has changed, the overall *number* of applications per year has remained steady or slightly lower. He added that one goal of the Master Plan is to upgrade the housing stock and that this Board plays a part in balancing neighborhoods and meeting that goal. Noting that applications heard by the Board in 2020 would be the subject of a similar review early next year, Chairman Breslin asked Mr. Schley to conduct a review of undersized lots with just coverage issues to see what would need to be done to eliminate the need to appear before the Board. He was also asked for a review of setbacks for undersized lots.

In lieu of making any recommendations, the Board decided to add verbiage to the report to acknowledge the upward trend in the number of residential lot coverage variance applications over the past few years. Mr. Warner advised that the final draft of the report would be available at the next meeting.

### **COMMENTS FROM MEMBERS OR STAFF**

Chairman Breslin stated that the September 17, 2020 meeting would be cancelled.

Ms. Kiefer advised that a "Statement of Interest" memo would be sent to all board members. She noted that regardless of term expiration, each member must respond and indicate whether or not he/she is interested in returning to the Board in 2021.

### **ADJOURN**

On motion by Ms. Genirs, seconded by Mr. Kraus, all eligible in favor and carried, the meeting was adjourned at 10:24 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 10-07-2020*

09/24/2020 v2 dssw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ROBERT and SUSAN McCRONE**

**Case No. ZB20-011**

**RESOLUTION**

**WHEREAS, ROBERT and SUSAN McCRONE** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief relating to the expansion of the existing driveway and the nonconforming location of the existing shed, located on property identified as Block 1302, Lot 26 on the Official Tax Map, more commonly known as 55 Decker Street (the “Property”):

1. A variance for a proposed lot coverage of 22.62%, whereas the existing lot coverage is 19.64%, and the maximum permitted lot coverage in an R-7 (1/2 acre) residential zone is 20%, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance (the “Ordinance”);
2. A variance for an existing side-yard setback of 3’6” to the existing shed, whereas the minimum required side-yard setback to an accessory structure in an R-7 (1/2 acre) residential zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Ordinance;
3. A variance for an existing rear-yard setback of approximately 8 feet to the existing shed, whereas the minimum required rear-yard setback in an R-7 (1/2 acre) residential zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Ordinance;
4. A variance for a proposed side-yard setback of the driveway of 3’2”, whereas the minimum required side-yard setback for a driveway is 5 feet, pursuant to Section 21-38.1.d of the Ordinance; and

**WHEREAS, a duly noticed public meeting was held on August 5, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and**

**WHEREAS, the Board, after carefully considering the evidence presented by the Applicants and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:**

1. The Board has reviewed the application and deemed it complete.
2. The Property is a 11,250 square foot (0.258 acre), undersized, rectangular lot fronting on Decker Street. The Property is presently improved with an existing dwelling with an attached one-car garage, a deck, two frame sheds and associated driveway and walkways.
3. The Applicants propose to expand their existing driveway by 335 square feet, specifically increasing the width at the street from approximately 10 feet to 12 feet and increasing the width at the garage from approximately 12 feet to 19' 8". The Applicants also seek approval for the nonconforming location of an existing, unapproved 50 square foot shed in the rear, northwesterly corner of the Property.
4. The Applicants' proposal is depicted on a Survey prepared by John Cilo, Jr., dated August 23, 1995, unrevised, same consisting of one (1) sheet, with the Applicants' proposed improvements sketched thereon. The Applicants also submitted ten (10) photographs of the Property.
5. The Property is in an R-7 (1/2 acre) residential zone. The requested variances for the lot coverage, side- and rear-yard setbacks for an accessory structure (shed), and driveway setback deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).
6. David Schley, A.I.C.P., P.P., the Township/Board Planner, and Thomas J. Quinn, P.E., C.M.E., the Board Engineer, both were duly sworn according to law.
7. Robert and Susan McCrone, the Applicants, having an address of 55 Decker Street, were duly sworn according to law. Mr. McCrone testified that the Applicants are seeking to replace and expand their existing driveway because the width of same cannot accommodate two vehicles and it is in need of repairs. He explained that he and his wife have two teenage sons who will be driving soon and the existing driveway does not provide sufficient space for all of the family's

vehicles, requiring them to park some vehicles on the street rather than onsite. Mr. McCrone contended that the proposal will improve the safety of the area and the aesthetics of the Property.

8. On discussion of the nonconforming location of the existing shed, Mr. McCrone testified that the shed has been in the same location for approximately twenty (20) years, and relocating the shed to a conforming location would result in the shed being in the middle of the backyard. Mr. McCrone explained that the shed is not visible from neighboring lots or the street, given the existing fencing and landscaping. The Applicants stipulated, as a condition of approval, to maintaining the existing fencing and landscaping for so long as the shed exists in a nonconforming location to ensure sufficient screening of same from adjacent neighbors.

9. The Applicants stipulated to complying with the comments and recommendations set forth in the review memorandum prepared by the Board Engineer, Mr. Quinn, and the Board Planner, Mr. Schley.

10. Mr. McCrone testified that the photographs of the shed and driveway submitted with the application were taken by Mrs. McCrone in April of 2020, and that they constitute an accurate depiction of the Property as it presently exists.

11. Roy Crego, having an address of 12 Mount Airy Road, was duly sworn according to law. Mr. Crego introduced into evidence, as **Exhibit O-1**, a compendium of five sheets constituting his presentation to the Board. Mr. Crego testified that he opposes the Applicants' proposal because the Applicants did not state in their application that the driveway is currently violating the Ordinance requirements. He explained that the Applicants have been expanding their driveway area with gravel over the years and that said gravel encroached onto his property. Mr. Crego advised that he has been in contact with the Township regarding the nonconforming driveway, but that the Applicants have not removed the gravel. He introduced into evidence, as **Exhibit O-2**, an email from the Zoning Official, Nancy Koederitz, dated April 23, 2020. Mr. Crego



contended that the Applicants' proposal will have an adverse impact on the value of his property and that the value will continue to decline if the Applicants start parking multiple vehicles, boats, recreational vehicles, or commercial trucks on their Property.

12. On questioning, Mr. Crego conceded that the Applicants have not damaged his property. On discussion the Applicants stipulated that if the approval is granted and the driveway is expanded, then the 3'2" area between the driveway and Mr. Crego's property, would remain vegetative (i.e., lawn and/or landscaping). The Applicants further stipulated to curbing the edge of the driveway to limit further expansion of same and better direct stormwater runoff toward the street.

13. Mr. McCrone testified that the Applicants have no intention of purchasing a recreational vehicle or boat, and he recognized that the parking of same in a front yard would not be permitted under the Ordinance. He further testified that the Applicants do not own or operate any commercial vehicles and that if Mr. Crego observed a truck, it may have been a contractor or his work truck during an employment strike. Mr. McCrone explained that the Applicants have had issues with the narrowness of their driveway and that delivery drivers often run over the curb and damage the Property. He further explained that, when the family has parked vehicles on the street, the vehicles have been hit by delivery drivers who could not navigate the narrow road.

### **DECISION**

14. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the lot coverage, side- and rear-yard setbacks for an accessory structure (shed), and driveway setback deviations under both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

15. First, as to the c(1) positive criteria for the lot coverage and accessory structure and driveway setback deviations, the Board finds that the Applicants have satisfied same by

demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. In this regard, the Board recognizes the narrow, undersized nature of the Property, as well as the location of the existing lawfully constructed improvements thereon, make it extremely impracticable for the Applicants to expand their driveway. Here, the proposed lot coverage of 22.62% exceeds the maximum permitted lot coverage by 295 square feet (2.62%). The Applicants' 11,250 square foot lot is about half the area of a conforming lot in the R-7 Zone. For comparison purposes, the Applicants' lot coverage would be a conforming 11.69% if all of the coverage was located on a conforming 21,780 square foot lot.

16. The Board further finds that the Applicants have established that no additional land is available for purchase which would bring the lot width or lot area into, or closer to, conformity with the district standards of the Land Development Ordinance, without rendering adjacent properties nonconforming or more nonconforming. Finally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title.

17. Second, under the c(2) positive criteria for the lot coverage exceedance and setback deviations, the Board finds that the Applicants have satisfied same by demonstrating that the purposes of the Municipal Land Use Law ("MLUL") will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. In this regard, the Board finds that the proposed development will provide a desirable visual environment, enhance the housing stock, improve the visual compatibility of the Property with adjoining properties, and otherwise promote the general welfare. The Board notes that the wider driveway will allow the Applicants to park their vehicles in the driveway rather than on the street and will generally improve the safety and functionality of

the Property and the street. As such, the Board finds that the Applicants have demonstrated that the proposal advances the purposes of the MLUL, and that the benefits derived from the Applicants' proposal substantially outweigh the relatively modest detriment associated with the proposal, particularly given the stipulated to conditions.

18. Third, the Board finds that the Applicants have satisfied the negative criteria for all of the requested variance relief, that is, they have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the first prong of the negative criteria, the Board recognizes the relatively modest magnitude of the proposal, the proposed safety and aesthetic improvements, and the stipulated conditions will mitigate the relatively modest detriment associated with the Applicants' proposal. As to the second prong of the negative criteria, the Board finds that the bulk variances requested are relatively modest and clearly do not rise to the level of constituting a rezoning of the Property.

WHEREAS, the Board took action on this application at its meeting on August 5, 2020, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards that the application of **ROBERT and SUSAN McCRONE**, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- (2) The Applicants shall obtain a zoning permit for the driveway expansion and shed, and shall obtain an engineering permit prior to any work being done within the Decker Street right-of-way;
- (3) The 3'2" strip of land between the Applicants' driveway and property line shared with adjoining Lot 1, Block 1302 (12 Mt. Airy Road) shall remain in a vegetated

state (i.e., lawn and/or landscaping) and shall not be improved with any additional impervious coverage;

- (4) The Applicants shall maintain the existing 6 foot high, board-on-board fencing that screens the neighboring property owner's (Lot 1, Block 1302, 12 Mt. Airy Road) view of the driveway and shed, for so long as the driveway or shed exist in a nonconforming location(s);
- (5) The Applicants shall install curbing along the easterly edge of the proposed driveway and same shall be subject to the review and approval of the Township Engineering Department;
- (6) If, and when, the Applicants remove, or replace, the current shed(s) on the Property, any replacement shed(s) shall be located in a conforming location, or the Applicants shall be required to return to the Board to seek further variance relief and the Board shall retain jurisdiction thereof;
- (7) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (8) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- (9) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances granted herein shall expire unless such construction or alteration permitted by the variances has actually commenced within one year of the date of this Resolution.

**ROLL CALL VOTE:**

Those in Favor: Breslin, Cambria, Eorio, Kraus, Pochtar

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on September 9, 2020.



Cyndi Kiefer, Secretary  
ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF BERNARDS,  
COUNTY OF SOMERSET,  
STATE OF NEW JERSEY

Dated: September 9, 2020

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**LINCOLN AVENUE GOSPEL HALL  
Case No. ZB20-006**

**RESOLUTION**

WHEREAS, **LINCOLN AVENUE GOSPEL HALL** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for preliminary and final site plan approval, and the following variance and site plan exception relief, in connection with the renovation of the existing residence for use as a house of worship and the construction of 15 parking spaces, on property identified as Block 8903, Lot 36 on the Tax Map, more commonly known as 3265 Valley Road (the “Property”):

- (1) A d(3) conditional use and bulk variance for an existing lot area of 0.91 acres for a house of worship, whereas the minimum required lot area for a house of worship is 4 acres, and for a dwelling in the R-4 Zone is 1 acre, pursuant to Sections 21-12.3.f.1, 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (2) A d(3) conditional use and bulk variance for a proposed lot coverage of 28.4% for a house of worship, whereas the existing lot coverage is 12.3%, and the maximum permitted lot coverage for a house of worship, and for a dwelling in the R-4 Zone, is 15%, pursuant to Sections 21-12.3.f.3, 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (3) A d(3) conditional use and bulk variance for a proposed front-yard setback for a house of worship of approximately 23 feet, whereas the minimum required front-yard setback for a house of worship is 100 feet, and for a dwelling in the R-4 Zone is 75 feet, pursuant to Sections 21-12.3.f.4, 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (4) A d(3) conditional use and bulk variance for a proposed side-yard setback (west) for a house of worship of 8.6 feet, whereas the minimum required side-yard setback for a house of worship is 100 feet, and for a dwelling in the R-4 Zone is 20 feet, pursuant to Sections 21-12.3.f.4, 21-15.1.d.1 and Table 501 of the Land Development Ordinance;

- (5) A d(3) conditional use variance for a proposed parking setback (east) of 40.7 feet, whereas the minimum required parking setback for a house of worship is 100 feet, pursuant to Section 21-12.3.f.5 of the Land Development Ordinance;
- (6) A d(3) conditional use variance for a proposed parking setback (west) of approximately 44.6 feet, whereas the minimum required parking setback for a house of worship is 100 feet, pursuant to Section 21-12.3.f.5 of the Land Development Ordinance;
- (7) A d(3) conditional use variance for a proposed parking setback (rear/south) of approximately 52 feet, whereas the minimum required parking setback for a house of worship is 100 feet, pursuant to Section 21-12.3.f.5 of the Land Development Ordinance;
- (8) A d(3) conditional use variance for exterior lighting before 8:00 AM (5:00 AM proposed) on Sunday, whereas all exterior lighting, except that required for security, shall be turned off between 11:00 PM and 6:00 AM Monday through Saturday and between 6:00 PM and 8:00 AM on Sunday for a house of worship, pursuant to Section 21-12.3.f.9 of the Land Development Ordinance;
- (9) A bulk variance for an existing accessory (shed) building setback (east) of 7.1 feet, whereas the minimum building setback for an accessory structure is 15 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance<sup>1</sup>;
- (10) A bulk variance for an existing accessory (shed) building setback (rear) of 6.1 feet, whereas the minimum building setback for an accessory structure is 20 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance<sup>2</sup>;
- (11) A bulk variance for a proposed buffer width (east) of 15 feet between the property and a residentially zoned lot, whereas the minimum buffer width is 50 feet between the property and a residentially zoned lot, pursuant to Section 21.28.2.a of the Land Development Ordinance;
- (12) A bulk variance for a proposed buffer width (west) of 8.6 feet between the property and a residentially zoned lot, whereas the minimum buffer width is 50 feet between the property and a residentially zoned lot, pursuant to Section 21.28.2.a of the Land Development Ordinance;
- (13) A bulk variance for a proposed buffer width (rear) of 20 feet between the property and a residentially zoned lot, whereas the minimum buffer width is 50 feet between the property and a residentially zoned lot, pursuant to Section 21.28.2.a of the Land Development Ordinance;

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<sup>1</sup> The Applicant stipulated to relocating the shed, thereby eliminating the need for the requested relief.

<sup>2</sup> The Applicant stipulated to relocating the shed, thereby eliminating the need for the requested relief.

- (14) A site plan exception for no loading space, whereas at least one loading space is required, pursuant to Section 21-39.2.a of the Land Development Ordinance; and
- (15) A site plan exception for insufficient open space within the perimeter of the parking area, whereas the minimum open space is 5%, pursuant to Section 21-39.3.a.6 of the Land Development Ordinance; and
- (16) A site plan exception for a proposed fire lane width of 24 feet, whereas the minimum required width of a fire lane is 25 feet, pursuant to Section 21-46A.1.e.5 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on August 5, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Property consists of 39,809 square feet (0.91 acres), fronts on Valley Road, and is located in the R-4 Residential Zone. The absence of wetlands, wetlands transition areas, and riparian zones has been verified by the Applicant's environmental consultant. The Property is presently improved with a small, single-family ranch dwelling in the northwest corner and a small shed in the rear yard (in the southeast corner of the Property). The Property is adjacent to a gasoline station/auto repair shop to the west and a single-family dwelling with a detached three-car garage to the east.

2. The Applicant proposes to redevelop the existing single-family residence for use as a house of worship. The interior of the existing one-story, 938 square foot dwelling is to be renovated to provide a roughly 21 foot by 25 foot (approximately 538 square feet) prayer hall, restrooms, a closet and hallway/foyer space. The prayer hall, which will be used for twice-weekly services (Sunday mornings and Monday evenings) is shown on the floor plans to be open with no



fixed seating, though the plans estimate a maximum of 42 seats. A new door and an exterior staircase (four steps with a 4 foot by 8 foot upper landing) is proposed at the rear of the building.

3. The existing driveway is proposed to be widened to 24 feet to provide paved/curbed access to fifteen (15) parking spaces in the rear yard. The parking area design includes six (6) additional parking spaces that will be “banked” for potential future construction.

4. The stormwater management design includes a proposed detention basin in the easterly side yard. The existing dwelling is connected to the public water and sanitary sewer systems, and the Applicant proposes to utilize said existing connections.

5. The Applicant’s proposal is depicted on Site Plans prepared by William G. Hollows, P.E., P.P., P.L.S., dated March 3, 2020, last revised April 27, 2020, same consisting of eight (8) sheets; a Survey prepared by Mr. Hollows, dated November 7, 2019, unrevised, same consisting of one (1) sheet; and Architectural Plans prepared by John J. Haeberle, A.I.A., dated January 2, 2020, unrevised, same consisting of three (3) sheets. The Applicant also submitted a Stormwater Management Report prepared by Catherine Mueller, P.E., dated January 2020; Drainage Maps also prepared by Ms. Mueller, dated May 7, 2020, unrevised, same consisting of two (2) sheets; a compendium of seven (7) photographs of the Property and a Wetlands/Transition Area Investigation prepared by David C. Krueger of Environmental Technology Inc., dated May 2, 2020.

6. Frederick B. Zelle, Esq., of Bisogno, Loeffler & Zelle, LLC, entered his appearance on behalf of the Applicant.

7. David Schley, A.I.C.P./P.P., the Township/Board Planner, and Thomas Quinn, P.E., C.M.E., the Board Engineer, were both duly sworn according to law.

8. James Druckenmiller, Trustee of Lincoln Avenue Gospel Hall, having an address of 142 Bayberry Lane, Watchung, New Jersey, was duly sworn according to law and testified as a fact witness. He testified that he is the Trustee of Lincoln Avenue Gospel Hall (the "Hall") and that the Hall is a nonprofit entity established in 1947 to, inter alia, hold properties purchased by the Hall. Mr. Druckenmiller explained that the Hall is affiliated with Plymouth Brethren Christian Church, which has a main facility in Warren, New Jersey. He further explained that the Property would be used as a satellite site for congregants of the Hall residing in Basking Ridge and the surrounding area.

9. On questioning, Mr. Druckenmiller testified that the Hall has approximately 300 congregants in Warren and the surrounding area. He explained that the main facility is where most Bible meetings take place and that the satellite facility will give local congregants the ability to participate in Sunday morning and Monday evening worship services, which would otherwise be impossible for all 300 congregants in one location. Mr. Druckenmiller testified that, after the Sunday morning worship service at their respective satellite locations, congregants then go back to their houses before re-assembling at the Warren location for group Bible readings and Gospel preaching. On questioning, he testified that the Basking Ridge satellite location will be one of nine (9) satellite facilities, all of which are primarily used by members of the local community.

10. On questioning, Mr. Druckenmiller testified that he anticipates that approximately 30 to 40 congregants will participate in the worship services, but that he does not expect that the services will disturb adjacent neighbors. He explained that the Property was selected because it is on a County road across from a hospital and adjacent to a gas station, rather on a cul-de-sac or in the middle of a dense residential neighborhood. Mr. Druckenmiller reiterated that the Property will only be used two days per week and only for limited periods of time on those two days. He testified

that services on Sunday morning will be scheduled for 5:30 AM, generally start once all of the congregants arrive at approximately 5:40 AM, and last approximately an hour.

11. Mr. Druckenmiller testified that there are no social gatherings before or after the services, nor is there any food or beverages prepared or served on site. He further testified that the Monday service will be scheduled between 6:00 and 7:00 PM, and also lasts approximately an hour. Mr. Druckenmiller contended that the parking demand is generally for approximately eight (8) or nine (9) vehicles. He clarified that the number of vehicles is based on the assumption that most of the congregants will come as families with about four congregants to a vehicle.

12. As to the existing dwelling on the Property, Mr. Druckenmiller testified that the Applicant intends to renovate same without changing the exterior, beyond cleaning it up and planting some bushes and other landscaping. The interior will be converted to a large open room with two bathroom facilities and an entry foyer at the rear of the dwelling. Mr. Druckenmiller stipulated that the existing kitchen in the dwelling would be removed and would not be reinstalled while the Property is used as a house of worship. He explained that the basement will only be used for mechanical equipment and that the roof in the attic is very low and the attic is only accessible by way of a hatch.

13. On questioning, Mr. Druckenmiller testified that the Applicant will not host Sunday school, picnics or outdoor activities, or anything other than the described services on Sunday morning and Monday evening. On questioning as to refuse removal, he explained that, given the proposed use of the Property, there is very little refuse and any refuse generated would be removed by members of the congregation assigned to clean up the Hall after the services.

14. On questioning as to whether the number of congregants at this satellite location would increase, Mr. Druckenmiller testified that once the congregation grows beyond 30 to 40

congregants, another satellite location likely would be opened, because it is important that the size of the congregation remains small, given the intimate nature of the worship services. He further testified that, if the congregation increases in the interim, there would not be additional sessions held at different times, because it is important that all of the congregants worship at the same time. Mr. Druckenmiller explained that there is no office space proposed and that the Property will not be used by anyone other than the congregants and only on Sunday and Monday, as testified. He further explained that there is no ordained clergy or group leader and that no one will be living at the Property.

15. William G. Hollows, P.E., P.P., P.L.S., having a business address of 192 Central Avenue, Stirling, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the fields of both civil engineering and professional planning. Mr. Hollows, referencing the site plans submitted with the application materials, testified that the Property is located in the R-4 Residential Zone on the southern side of Valley Road, approximately 157 feet from Acken Road. He further testified that to the west of the Property is a Delta Gas Station, across the street is the Veterans Administration Hospital and a golf course, and to the rear and east are residential dwellings. Mr. Hollows testified that the Property is currently improved with a ranch-style dwelling in the northwest corner of the Property adjacent to the Delta Gas Station, as well as a shed and an adjacent driveway on the southeast corner of the Property. He testified that the Applicant will relocate the existing shed to a conforming location and stipulated to same on behalf of the Applicant. Mr. Hollows testified that there are no environmental constraints on the Property. He further testified that the Applicant proposes to dedicate a 25-foot wide portion of the Property to the County for road widening purposes.

16. Referencing Sheet 3 of the site plans, Mr. Hollows testified that the Applicant intends to maintain the existing dwelling, and to remove and replace the existing driveway with a 24 foot wide driveway and a parking area consisting of 21 parking spaces, six (6) of which are proposed to be banked for future development and one (1) of which will be compliant with the Americans with Disabilities Act (“ADA”) requirements. Referencing Sheet 4, Mr. Hollows testified that the Applicant intends to construct a stormwater management facility that will consist of a detention system with a shallow pond that will drain to Valley Road. He confirmed that there will be no stormwater runoff onto adjacent properties, because the Applicant intends to raise the grade of the parking area, such that it will drain towards Valley Road, rather than the residences to the rear. Mr. Hollows explained that the detention system is not intended to hold significant amounts of stormwater runoff, because it is only two (2) feet deep. He further explained that the parking area will be curbed to ensure that stormwater runoff will not flow onto the adjacent properties. On questioning, Mr. Hollows testified that the Applicant intends to remove one tree, but that another tree also might have to be removed, but that same could be addressed by the Board’s professionals.

17. Mr. Hollows introduced into evidence, as **Exhibit A-1**, a colorized rendering of Sheet 6 of 8 of the site plans. Referencing same, he explained that there will be 15 parking stalls constructed as part of the proposal and an additional 6 stalls will be banked for future use. He described the location of the detention basin and testified that there will be landscaping along the perimeter of the Property, as well as a 6-foot high stockade fence along the western side of the Property. Mr. Hollows testified that there are remnants of a wire fence along the eastern portion of the Property, and there is a stockade fence in poor condition along the rear of the Property. Mr. Hollows stipulated, on behalf of the Applicant, that the stockade fence will be replaced with a new

six foot stockade fence. On questioning, Mr. Hollows testified that there are propane tanks stored outside and that the propane is necessary to provide heat and hot water to the dwelling. He further testified that the Applicant proposes to construct a new walkway from the parking lot to the rear building entrance.

18. As to the lighting, Mr. Hollows testified that six (6) shoebox-style lighting fixtures are proposed to be mounted on 12 foot tall poles, and that same complies with the Ordinance requirements. On discussion of the lighting plan, Mr. Hollows realized that same might be inaccurate because it shows that there will be light spillage along the westerly property line, whereas Mr. Hollows did not believe such spillage was proposed. The Applicant stipulated, as a condition of approval, to reviewing and revising the lighting plan as necessary to comply with the Ordinance requirements, and to providing any additional information requested by the Board Engineer or Board Planner, particularly details of the proposed lighting fixtures.

19. Mr. Hollows reviewed the Ordinance conditions for a house of worship use and opined that, while the Applicant does not comply with many of the conditional use requirements, the proposal is, nevertheless, consistent with the neighborhood. The Applicant stipulated, as a condition of approval, to relocating the existing shed to comply with accessory building setback requirements. On questioning as to the maintenance associated with the proposed detention basin, Mr. Hollows testified that the area would need to be mowed and the Applicant would need to ensure that there is no debris in the outlet or trench drain structures.

20. Ellen Bond, having an address of 12 Acken Road, questioned the need for so many parking spaces, and Mr. Hollows advised that the Ordinance requires 14 parking spaces to be provided. On questioning as to the chainlink fence around the dog pen on the Property, Mr. Hollows testified that same would be removed. On questioning as to the stormwater management

plan, Mr. Hollows explained that the Applicant will capture stormwater runoff from the paved area and there will be a net decrease in the volume and rate of flow for stormwater runoff from the Property.

21. On questioning, Mr. Druckenmiller contended that the dwelling, and the access thereto, did not have to be fully ADA compliant, because the costs of compliance would exceed more than 20% of the project value. On further discussion, the Applicant stipulated that ADA access to the Hall would be provided in accordance with the recommendations of the Building Department, and, if an ADA compliant ramp is necessary, same will be located within the westerly side yard setback area, and the Board would grant the variance relief necessary for same. The Applicant stipulated that any encroachment associated with such a ramp would be only to the extent necessary to effectuate the construction of same. Mr. Druckenmiller confirmed that the exterior of the dwelling would not change and the Property would appear to have a typical residential dwelling located on it. On further questioning, he testified that no signage is proposed.

22. As to the July 23, 2020 Review Memorandum prepared by Mr. Schley, the Applicant stipulated to complying with the comments and recommendations set forth therein. As to Comment 12 regarding a fire lane, Mr. Hollows opined that striping the fire lane would render the Property out of character with the neighborhood, as such striping would give the Property a more commercial appearance. As to Comment 17 regarding the landscape screening, the Applicant stipulated to complying with items A through F, and also to ensuring sufficient landscaping is provided to mitigate the headlight glare onto adjacent residential properties, particularly given the proposed early morning nature of the services on Sundays. Mr. Schley suggested that evergreen shrubbery installed immediately adjacent to the parking area would be an appropriate buffer to

mitigate headlight glare, and the Applicant stipulated to including an additional evergreen hedge to supplement the proposed landscaping.

23. As to the August 4, 2020 Review Letter prepared by Mr. Quinn, the Applicant stipulated to complying with the comments and recommendations set forth therein. As to Comments 9 through 11, the Applicant stipulated to complying with the recommendations of the Building Department/Township Engineering Department as to ADA compliance. On discussion, the Applicant requested that, if an ADA compliant ramp is required, the Board grant the variance relief necessitated by locating the ramp within the required setback/buffer area. The Applicant stipulated to reviewing and revising the lighting plan to ensure compliance with the Ordinance requirements, to include a note on the plans providing that no site lighting will be on after hours, and that the front and rear door lighting will be motion activated.

24. As to the July 28, 2020 Environmental Commission Memorandum, the Applicant stipulated to adding a low flow channel in the detention basin to provide an opportunity for stormwater runoff infiltration. Mr. Quinn advised that the soils are not conducive to using pervious pavers and, moreover, such pavers would not ultimately reduce the overall coverage.

25. Mr. Hollows provided his expert planning testimony and contended that the Applicant had demonstrated that the site can accommodate the proposed use notwithstanding the noncompliance with several of the conditional use requirements for a house of worship. He opined that the proposed use is less intense than a single-family dwelling. Mr. Hollows testified that the proposal eliminates the nonconforming conditions associated with the existing shed, thereby providing an additional benefit to the community.

26. As to the requested variance relief for the insufficient residential buffers, Mr. Hollows opined that the Applicant had demonstrated the positive criteria pursuant to N.J.S.A.



40:55D-70(c)(1), because the Property is an undersized lot and cannot accommodate the minimum required buffers. He further opined that the requested relief also could be granted pursuant to N.J.S.A. 40:55D-70(c)(2), because the benefits of the Applicant's proposal substantially outweigh the detriment associated therewith, particularly given the additional landscaping, the relatively small size and infrequent use of the parking area, and the conditions stipulated to by the Applicant. Mr. Zelley contended that the Applicant's proposal also will improve the existing stormwater runoff conditions. Mr. Hollows opined that the Applicant had also satisfied the negative criteria by demonstrating that the proposal will not result in substantial detriment to the public good or substantial impairment of the Master Plan and Zoning Ordinance.

27. Ellen Bond, having an address of 12 Acken Road, questioned the style of the proposed fence (6' tall stockade), the proposed planting height of the trees (between 4' and 6'), how the Applicant would mitigate the impact of headlights (by planting an evergreen hedge) and whether the Applicant had converted other single-family dwellings to houses of worship (he has).

28. Todd Edelstein, having an address of 172 Riverside Drive, questioned whether there would be cooking done onsite (there will not be and the kitchen will be removed), the magnitude of the driveway pitch (approximately 1%) and, generally, how the stormwater runoff would be captured. Mr. Hollows testified that there are trench drains in the driveway and that stormwater runoff will be directed toward the proposed detention basin.

29. Ms. Bond, having an address of 12 Acken Road (to the rear of the Property), was duly sworn according to law. Ms. Bond testified that stormwater runoff has been an issue, particularly in the rear/southwesterly portion of the Property near the existing dog pen. She explained that she is concerned about the noise that will be generated by multiple vehicles arriving on the Property at 5:30 in the morning on Sundays. She is further concerned that the Applicant's

proposal will have a negative impact on her quality of life and, possibly, her property value, given the proposed parking area and pole mounted lighting fixtures.

30. John Gray, having an address of 16 Acken Road, was duly sworn according to law. Mr. Gray expressed concern about the risk of a fire given the age of the existing wooden structure, its location next to a gas station, and the fact that it will be vacant 98% of the time. He suggested a mandatory fire alarm system monitored by the fire department. Mr. Gray objected to the granting of the requested relief, particularly given the magnitude of the variance relief requested. He opined that the size of the building/meeting room is not sufficient for 35 to 40 congregants. Mr. Gray testified that he is a certified forester and member of the Township Shade Tree Commission and commented that he did not believe the proposed landscaping plan is appropriate, particularly since only one of the five proposed planting species is native to the area. He concurred with Ms. Bond that stormwater runoff has been a problem and expressed concern that the proposed improvements would exacerbate the existing conditions. Mr. Gray expressed further concern about the potential noise associated with vehicles arriving at the Property early Sunday morning, as well as the headlights shining onto adjacent properties.

31. Mr. Edelstein, having an address of 172 Riverside Drive, was duly sworn according to law. He suggested that a sprinkler system be installed to improve the safety of the Property and recommended that the Applicant comply with the reasonable requests of the Fire Official.

### **DECISION**

32. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has satisfied its burden of demonstrating an entitlement to preliminary and final site plan approval and all of the d(3) conditional use, bulk variance, and site plan exception relief sought for the proposed development.

**The d(3) Conditional Use Variance Relief – Positive Criteria:**

33. As to the d(3) variance relief required, pursuant to Section 21-12.3.f of the Land Use Ordinance, for nonconforming conditions relating to the lot area, lot coverage, the front- and side-yard setbacks, the minimum parking setbacks, and the lighting requirements for a house of worship, the Board finds that, consistent with the standard set forth in Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), the Applicant has established that the site can accommodate the detriments associated with the proposed use despite the violation of the conditional use requirements.

34. As to the existing lot area, the Board finds that the Applicant has demonstrated that, notwithstanding the undersized nature of the lot, the site can accommodate the proposed use. Here, the Board recognizes that the proposed house of worship is not a typical house of worship that can accommodate a significant number of people and multiple functions such as worship services, educational services, and community services, but rather a small satellite location within a converted ranch that is anticipated to be used by a small group of congregants within the immediate area. As to the proposed lot coverage, the Board concurs with the unrefuted expert testimony of the Applicant's planner that the site can accommodate the excess coverage and that, if the Board were to deny the requested relief, same would constitute an undue hardship on the Applicant. In this regard, the Board recognizes that the increased coverage is a function of the confluence of the undersized nature of the lot and the construction of the required parking spaces. The Board further recognizes that the Applicant proposes to bank six (6) parking spaces to reduce the proposed coverage, and also has stipulated to installing stormwater management measures to capture the runoff associated with same. The Board finds that the Applicant cannot increase the lot area to reduce the magnitude of the lot area and lot coverage deficiencies because the adjacent properties

are already developed and would be rendered nonconforming, or more nonconforming, as a result thereof.

35. As to the location of the house of worship within 100 feet of any property line, the Board concurs with the unrefuted expert testimony of the Applicant's planner that the existing building cannot be relocated into a conforming location, because the lot width is only 150 feet and a 100 foot side-yard setback on each side of the Property would create a negative building envelope. Moreover, the Board finds that the Applicant has demonstrated that the site can accommodate the deficient setbacks, particularly given the specific nature of the use of the Property as a satellite location for a small group of congregants, as well as the location of the Property on a major road, the existing landscaping and the conditions stipulated to by the Applicant. In this regard, the Board recognizes that the Property is located on a main road adjacent to a Delta Gas Station, across from the Veterans Administration hospital and golf course, and finds that the deficient setbacks will not have a detrimental impact on the adjacent properties given the nature of the surrounding neighborhood and the stipulated to conditions.

36. As to the location of the proposed parking area within 100 feet of any property line, the Board concurs with the unrefuted expert testimony of the Applicant's planner that the proposed parking area cannot be relocated into a conforming location because the lot width is only 150 feet and a 100 foot side-yard setback from the property line cannot be provided on either side of the parking area.

37. As to the proposed exterior lighting not being turned off between 6:00 PM and 8:00 AM on Sunday given the timing of services at approximately 5:00 AM, the Board concurs with the unrefuted expert testimony of the Applicant's planner that the lighting is necessary for congregants to safety use the parking lot and walkways. The Board recognizes that the Applicant

has stipulated to planting additional landscape buffering, including evergreen hedges, to mitigate the impact of headlights on adjacent properties, and to utilizing motion activated lighting fixtures on the front and rear doors of the building.

38. Pursuant to Section 21-12.2 of the Land Development Ordinance, the Board has considered and finds that the Applicant has demonstrated that the proposal does not conflict with the following provisions:

- A. Preservation of existing natural resources on the site.
- B. Safe and efficient vehicular and pedestrian circulation, parking, and loading.
- C. Proposed screening, landscaping, and locations of the structures and exterior lighting; and
- D. The exterior design of the proposed building and the proposed development of the site as a whole conform as much as possible to surrounding building and development and to such development as is permitted by right within the zone.

39. In sum, the Board finds that the Applicant has satisfied the positive criteria required for the grant of a d(3) conditional use variance relief for the lot area, lot coverage, deficient front- and side-yard setbacks, minimum parking setbacks, and the use of lights before 8:00 AM on Sunday.

**The c(1) “Undue Hardship” Variance Relief - Positive Criteria:**

40. As to the positive criteria for “(c)(1)” or “undue hardship” variance relief for the lot area deficiency, lot coverage exceedance, principal front- and side-yard setback deficiencies, and residential buffer encroachments, the Board finds that the Applicant has satisfied its burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, it as the owner of the Property.

Here, the Board recognizes that the Property is an undersized, narrow lot and that the proposed improvements are necessary, particularly the parking area, to accommodate the proposed use as a satellite location for small group of congregants. The Board further recognizes that that there is no additional land available for purchase to bring the lot area and lot width into conformity. Finally, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title.

**The c(2) “Flexible c” Variance Relief - Positive Criteria:**

41. As to the positive criteria under the “(c)(2)” or “flexible c” variance analysis for the lot area deficiency, lot coverage exceedance, principal front- and side-yard setback deficiencies, and residential buffer encroachments, the Board finds that the Applicant has demonstrated that the purposes of the Municipal Land Use Law (“MLUL”) will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. While the Board recognizes that the proposed use constitutes an inherently beneficial use, the Board cumulatively finds that the Applicant has demonstrated that the proposal advances purposes (a), (c), (g), (i) of Section 2 of the MLUL, because the proposal promotes the general welfare, provides adequate light, air, and open space, provides sufficient space for the proposed use in an appropriate location, and promotes a desirable visual environment. The Board further finds that the Applicant has demonstrated that the benefits of the Applicant’s proposal will substantially outweigh the detriment associated therewith, particularly given the stipulated to conditions which include additional landscape buffering, the relocation of the existing nonconforming shed, the replacement of existing fencing, and the

improvement of the existing stormwater runoff conditions.

**The Negative Criteria for the d(3) ,c(1) and c(2) Variance Relief:**

42. The Board next finds that the Applicant has satisfied the negative criteria for all of the requested variance relief by demonstrating that the requested relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Master Plan and Land Development Ordinance.

43. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The Board finds that the Applicant has demonstrated that the proposed improvements will not be out of character with the neighborhood particularly given the adjacent Delta Gas Station, location of the Property on a busy road, and the fact that the proposed house of worship will appear to be a single-family dwelling from the street. Further, given the stipulated to conditions, including landscaping, the relocation of the shed, and the other proposed site improvements, the Board finds that any potential detrimental impact to the surrounding neighborhood is sufficiently mitigated.

44. The focus of the “substantial impairment” prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation of the governing body and planning board’s authority to zone. Here, the Board recognizes that a house of worship is a permitted conditional use in the R-4 Residential Zone and the development proposal is not inconsistent with the goals and objectives of the Township Master Plan.

**The Site Plan Exception Relief:**

45. The Board recognizes that, pursuant to Section 21-34 of the Land Development Ordinance, an exception may be granted from the Ordinance requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions of such approval

if the literal enforcement of one or more provisions of the Ordinance is impracticable or would exact undue hardship because of peculiar conditions pertaining to the land in question.

46. As to Applicant's request for relief from the requirement that at least one loading space be provided, the Board accepts the Applicant's unrefuted testimony that the proposed house of worship use will not require a loading space as no deliveries to the Property are anticipated, particularly since no food or beverage will be served, and the Applicant is not proposing that any portion of the existing building be used as office space. As to the requested relief for the minimum required parking area landscaping, the Board recognizes that the parking area is designed to accommodate 15 parking spaces (plus six banked spaces) and, therefore, is too small to accommodate landscape islands within the parking area. The Board further recognizes that the Applicant stipulated to planting additional landscaping around the parking lot to mitigate any detriment impacts associated with the headlights from congregants' vehicles. As to the requested relief for the minimum required width of a fire lane, the Board recognizes that neither the Township Fire Official nor the Liberty Corner Fire Company expressed concern with the proposed driveway/fire lane width of 24 feet, and increasing the width for the sole purpose of ordinance compliance would unnecessarily increase the amount of impervious coverage on the Property. As such, the Board finds that the requested relief is reasonable and that the literal enforcement of the loading space, parking lot landscaping, and fire lane width requirements would exact undue hardship upon the Applicant.

**The Preliminary and Final Site Plan Approval:**

47. The Board further finds that the Applicant has complied with the requirements set forth in Section 21-54 of the Land Development Ordinance and N.J.S.A. 40:55D-46 and 50. As



such, the Board finds that good cause exists for granting the requested preliminary and final site plan approval, subject to the conditions of approval set forth below.

WHEREAS, the Board took action on this application at its meeting on August 5, 2020, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, that the application of **LINCOLN AVENUE GOSPEL HALL**, for preliminary and final site plan approval, d(3) conditional use and bulk variance relief, and site plan exception relief, as aforesaid, be, and is hereby, granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall make the following revisions to the Plans:
  - a. Sheet 1 – Add a title/note specifying Preliminary and Final Site Plan, and amend the Table of Drawings to include the architectural plans (sheets A-1 thru A-3);
  - b. Sheet 1 – Revise the zoning schedule where it is inconsistent with the variances and exceptions listed above;
  - c. Sheet 1 – Add a note confirming that the proposed coverage calculation includes the banked parking;
  - d. Sheet 3 – Revise the dimensions of the proposed handicapped parking space to specify an 11 foot wide vehicle space with a 5 foot wide access aisle;
  - e. Sheet 5 – Reduce the distance between the two easterly light poles to a maximum of 60 feet, in accordance with Section 21-41.2;
  - f. Sheet 5 – Delineate/label the banked parking area and specify whether the two southerly light poles will be installed with the initial parking or the banked parking;
  - g. Sheet 5 – Since all proposed light poles are in areas protected by curbing,

specify a minimum pole setback of at least 2.5 feet from the curb face and revise the light pole detail to reduce the height of the exposed concrete base from 2 feet to 3 inches;

- h. Sheet 5 – Provide graphic details for all pole-mounted and wall-mounted light fixtures, confirming all fixtures produce downward focused/shielded light. Fixture and pole details shall specify color/finish, which shall be dark bronze or similar dark color;
- i. The Applicant shall revise the plans to specify the removal of the 30” Maple tree in the front yard and the replacement of same with a new tree, same to be subject to the review and approval of the Township Planner;
- j. Sheet 6 – Revise the plan to include at least one shade tree of at least 3”-4” caliper, in accordance with Sections 21-39.3.a.6 and §21-43.3;
- k. Sheet 6 – In the plant list, change the specified quantity of viburnums to 14 (to match the plan), and specify a more deer-resistant alternative to replace the proposed Leyland cypress;
- l. Sheet 6 – Show seeding specifications for the detention basin;
- m. Sheet 6 – Add the following tree replacement/preservation notes:
  - 1. All construction activity shall comply with the tree removal and protection standards of Section 21-45;
  - 2. 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;
  - 3. 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;
- n. Sheet A-1 – Add a note stating use of the basement shall be limited to storage and utilities.

- (3) The Applicant shall only use the Property on Sunday mornings between approximately 5:30 AM and 7:30 AM and on Monday evenings between approximately 5:30 PM and 7:30 PM. If the Applicant wishes to increase the usage of the Property, the Applicant shall return to the Board for further approval;

- (4) The Board shall retain jurisdiction over the hours of operation;
- (5) The Applicant shall not use the Property for social gatherings before or after Sunday morning or Monday evening services;
- (6) The Applicant shall not prepare or serve food or beverages at the Property;
- (7) The Applicant shall remove the existing kitchen facilities and same shall not be reinstalled while the Property is used as a house of worship;
- (8) The Applicant shall revise the location of the proposed pole mounted lighting fixtures to comply with the 60' spacing requirement and the footcandle limitations, and same shall be subject to the review and approval of the Board Engineer;
- (9) The Applicant shall replace the existing 6 foot high stockade fencing along the rear of the Property;
- (10) The Applicant shall relocate the existing shed to comply with accessory building setback requirements and add plantings to provide a continuous screen near the southeasterly corner of the Property, and same shall be subject to the review and approval of the Board Engineer and Board Planner;
- (11) The Applicant shall remove the existing chain link fence/dog pen near the southwesterly corner of the site, as well as the light fixtures/wiring attached to it;
- (12) The Applicant shall provide evergreen screening immediately adjacent to the east side and rear of the parking area to screen the adjacent residences from headlight glare and same shall be subject to the review and approval of the Board Planner and Board Engineer;
- (13) The Applicant shall construct the banked parking spaces at any time prior to the capacity of the prayer hall exceeding 45 seats on a regular basis and if all banked parking is constructed, the prayer hall shall not exceed a capacity of 63 seats on a regular basis without further Board approval;
- (14) The Board shall retain jurisdiction over the construction of the banked parking spaces;
- (15) A stormwater management easement deeded to the Township shall be provided for the proposed stormwater management facilities. The easement shall include a maintenance manual, which shall be subject to review and approval by the Board Engineer. The easement shall be prepared by the Township Attorney, or by the Applicant's attorney, at the discretion of the Township Attorney, and shall be

subject to review and approval by the Township Engineer and Township Attorney, and executed by the Applicant and recorded with the Somerset County Clerk prior to issuance of a construction permit;

- (16) The Applicant shall revise the plans to provide more detailed field spot grades particularly out to, and along, the eastern and southern property bounds;
- (17) The Applicant shall revise the plans to reflect the proposed right-of-way dedication to the County along the site frontage and shall further revise the plans to clarify the location of the front property line;
- (18) The Applicant shall add a stop sign and stop bar at the new driveway mouth;
- (19) The Applicant shall revise the plans to include the proposed walkway surface and shall revise the details to clarify whether concrete or pavers are proposed;
- (20) The Applicant shall revise the plans to include a detail for the proposed curb taper;
- (21) The Applicant shall revise the plans to reflect compliance with the ADA requirements in accordance with the requirements of the Building Department;
- (22) If the Building Department requires that an ADA compliant ramp be constructed same shall be located so as to minimize the encroachment into the required setback/buffer area. The proposed encroachment shall be only the extent necessary to effectuate the construction of the ramp;
- (23) The Applicant shall revise the plans to provide additional spot grades on the grading plan along the proposed new walkway to demonstrate ADA compliance for the route from the parking stall to the ADA building entrance and in the bottom of the detention basin to show the slope proposed for the basin bottom, as well as at the mouth of what appears to be an emergency spillway;
- (24) The Applicant shall revise the simplified drainage area maps to identify the 24 different drainage subarea nodes to facilitate verification of the calculations provided and same shall be subject to the review and approval of the Board Engineer;
- (25) The stormwater management report shall be revised to clarify the stage/storage information provided for the proposed detention basin. Currently, two separate charts appear with different elevations and differing stage storage volumes;
- (26) The Applicant shall review the size of the proposed basin discharge pipe of 15" as the proposed basin discharge does not appear to warrant a pipe of this size and it is noted that the existing pipe on the downstream side of the connection is a 12" pipe. The Applicant's engineer shall review same as it appears that the 15" pipe may

impact the existing frame and grate on the existing shallow inlet;

- (27) The Applicant shall install a low-flow channel to encourage infiltration within the proposed detention basin, shall revise the plans accordingly, and same shall be subject to the review and approval of the Board Engineer;
- (28) The Applicant shall revise the plans to include inverts for the proposed trench drain, roof leader system, and the tie in to the existing inlet in the County right-of-way;
- (29) The Applicant shall revise the proposed spot grades of BC 287.1 at the corners of the banked parking area as same are too low and should provide 1% slope across the parking area;
- (30) The Applicant shall revise spot grade BC 286.70, located where the parking area meets the driveway, as same appears to be in error;
- (31) The Applicant shall revise the lighting plan to indicate the proposed hours of lighting operation, which shall comply with Section 21-12.3.f.9 except lights may be turned on not earlier than 5:00 AM on Sundays. The Applicant shall also add a note to the plan providing that the lighting at the front and rear doors will be motion activated;
- (32) The Applicant shall revise the plans to address the discrepancy regarding the elevation of the outlet control structure grate elevation, which appears as 285.0 on the plan, but is indicated as 285.5 in the drainage calculations. Based on the drainage calculations, it appears that 285.5 is the correct number but same shall be verified;
- (33) The Applicant shall obtain approval from the Somerset County Planning Board for the proposed ingress/egress driveway;
- (34) The soil erosion and sediment control plan is subject to approval by the Somerset-Union Soil Conservation District;
- (35) The Applicant shall install an addressable fire alarm near the entrance closest to the parking lot;
- (36) The Applicant shall install a Knox Box near the parking lot side of the building. The box shall be ordered through the Fire Official before the building is completed. Keys to all outside doors, all inside locked spaces, fire alarm pull stations and fire alarm panels shall be in the box. Any and all codes for door locks and for silencing and resetting the fire alarm shall also be included inside the box;
- (37) The Applicant shall provide a letter to the Fire Official explaining how carbon monoxide detection will be addressed in the building;

- (38) The Applicant shall provide the proper NFPA 704 placards for LP-Gas (propane) in the area of the exterior LP-Gas tanks;
- (39) The Applicant shall schedule a date and time with the Fire Official to conduct a Fire Department walkthrough of the building once construction is completed;
- (40) The Applicant shall relocate the two light poles on the west side of the driveway to the east side of the driveway so as not to inhibit fire department tower ladder operations;
- (41) The Applicant shall install mountable curbing, rather than vertical curbing, so as not to inhibit fire vehicle operations in the driveway area. Vertical curbing shall be used in the parking lot area to provide stormwater runoff control;
- (42) The trench drain in the driveway shall be designed to support a gross vehicle weight of at least 82,000 pounds;
- (43) The Applicant shall comply with N.J.A.C. 5:70-4.7 regarding windowless basements;
- (44) The Applicant shall install a remote fire alarm annunciator panel inside the main entrance;
- (45) The Applicant shall schedule and attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity;
- (46) The Applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department;
- (47) Pursuant to the Board's Rules and Regulations, the following time limitation conditions shall apply:
  - a. Revisions to Plans. Revisions to the submitted plans and other documents, as may be required as conditions of approval, shall be made, and the plans signed by the Board Secretary, within six months of the adoption of the Board's resolution. In the event that the applicant fails to make the revisions as required and/or fails to obtain signatures on the plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void.
  - b. Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy. The Applicant shall apply for and obtain a construction permit within two years of the adoption of the Board's resolution. If during said two year period, or extension thereof as granted by

the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The applicant shall also have one year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall automatically expire and become null and void.

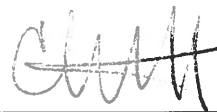
- (48) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, including conditions set forth in prior Board of Adjustment and Planning Board approvals, to the extent same are not inconsistent with the terms and conditions set forth herein; and
- (49) The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State.

ROLL CALL VOTE:

Those in Favor: Breslin, Cambria, Eorio, Kraus, Pochtar

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on September 9, 2020.



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Cynthia Kiefer, Secretary  
ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF BERNARDS,  
COUNTY OF SOMERSET,  
STATE OF NEW JERSEY

Dated: September 9, 2020