

# **TOWNSHIP OF BERNARDS** **PLANNING BOARD**

## **MINUTES v2** **REGULAR SESSION** June 8, 2021

Chairwoman Piedici called the meeting to order at 7:35 PM.

### **FLAG SALUTE**

### **OPEN MEETING STATEMENT**

Chairwoman Piedici read the following open meeting and procedural 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 20, 2021 and was electronically mailed to all those people who have requested individual notice.

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

### **ROLL CALL:**

Members Present: Baumann, Crane, Damurjian, Fields, Manduke, Mastrangelo, Piedici  
Members Absent: Asay, Eorio, McNally  
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Township Planner, David Schley, PP, AICP;  
Board Planner, David Banisch, PP, AICP; Board Engineer, Larry Plevier, PE, CME;  
Board Secretary, Cyndi Kiefer

Moved by Ms. Mastrangelo, seconded by Mayor Fields, all eligible in favor and carried, that the absences of Ms. Asay, Mr. Eorio and Mr. McNally be excused.

### **NOMINATIONS FOR VICE CHAIRMAN PRO TEMP**

Chairwoman Piedici advised the Board that since Mr. McNally has been appointed to the Township Committee and is now serving on the Board as a Class III member, he is not eligible to hold the office of Vice Chairman Pro Temp. On motion made by Mr. Damurjian and seconded by Ms. Manduke, all eligible in favor and carried, Ms. Mastrangelo was elected to serve the remainder of the 2021 term as Vice Chairwoman Pro Temp.

### **APPROVAL OF MINUTES**

May 4, 2021 - Regular Session - On motion made by Ms. Mastrangelo and seconded by Mr. Crane, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for Mr. Baumann (recused), Mr. Damurjian and Ms. Manduke (both for absences).

### **APPROVAL OF RESOLUTION**

[Fellowship Senior Living Inc.](#); Block 9301, Lot 33; 8000 Fellowship Road; Preliminary/Final Site Plan; PB20-005; (approved)

Ms. Manduke moved to approve the resolution as drafted. Second by Mayor Fields.

Roll call: Aye: Fields, Crane, Damurjian, Manduke, Mastrangelo, Piedici  
Nay: NONE

Motion carried.

### **APPOINTMENT OF LANDSCAPE COMMITTEE**

[Maolucci, Vincent J.](#); Block 11501, Lot 3.03; 48 Kings Ridge Road; Preliminary/Final Subdivision; PB12-009

Mr. Schley explained that as a condition of approval in the resolution, the Applicant stipulated to a review of the landscaping on Lot 3.03 by a Landscape Committee. Ms. Manduke, Mr. Baumann and Mr. Damurjian volunteered.

Mr. Crane recused himself from the following two (2) hearings and left the building.

### **HEARING – MODIFICATION OF CONDITION OF APPROVAL**

United States Golf Association; Block 9601, Lot 5.01; 77 Liberty Corner Road; Extension of Time to either commence construction of the approved parking layout or apply to the Board for a modified parking lot layout; PB17-003B

Present: Thomas J. Malman, Esq., Attorney for the Applicant

Thomas J. Malman, Esq., attorney with the firm of *Day Pitney LLP*, Parsippany, NJ, advised the Board that he was present on behalf of the Applicant. He offered a brief summary of the history of the application and stated that Condition #9 of the resolution required the Applicant to commence construction of the permanent parking area consistent with the 2017 amended final site plan approval or to submit an application to the Board for a modification of the layout by 06/06/2019. In 2019, the Applicant received a two-year extension expiring 06/06/2021 in order to review the parking lot plans in light of the recent acquisition of the adjacent Pyne tract. Unfortunately, with the onset of Covid, a comprehensive study could not be performed. Noting that this current request for an additional one-year extension expiring 06/06/2022 is the last site plan extension allowed by the Municipal Land Use Law, Mr. Malman added that the variances granted in conjunction with the approval would also expire after this extension according to the Township's ordinance.

After deliberations, Mr. Baumann moved to grant the modification of condition of approval along with the extension of final site plan protection and variances granted subject to the conditions stipulated to during testimony and as stated during deliberations. Mr. Damurjian seconded.

Roll call: Aye: Baumann, Damurjian, Fields, Manduke, Mastrangelo, Piedici  
Nay: NONE

Motion carried.

### **PUBLIC HEARING**

Fairmount Cemetery Association of Newark and Somerset Hills; Block 2301, Lot 12.01; 95 Mt. Airy Road; Preliminary/Final Site Plan; PB21-003

Present: Michael Osterman, Esq., Attorney for the Applicant  
Richard Gilman, Superintendent for the Applicant  
James O. Madsen, PE, Engineer for the Applicant

Michael Osterman, Esq., attorney with the firm of *Osterman Law LCC*, Somerville, NJ entered his appearance on behalf of the Applicant. He stated that the property, Somerset Hills Memorial Park, is comprised of a cemetery, mausoleum and crematory. The Applicant sought to expand the existing crematory from four (4) cremators to five (5) by replacing two (2) existing cremators and adding an additional cremator with room available for a sixth in the future. Mr. Osterman stated that this would require a small single story addition to the north side of the existing crematory on a paved area adjoining an existing parking lot and required no variances or exceptions.

Ms. Mastrangelo stated that she had seen the property in a prior application and Chairwoman Piedici advised that she had driven by the property.

Mr. Gilman, Mr. Madsen, Mr. Banisch, Mr. Plevier and Mr. Schley were duly sworn.

Richard Gilman, Superintendent of the cemetery for the past 10 years, testified that the crematory is located in the center of the mausoleum and has been in operation since 1976. In 1984, two (2) additional cremators were added to the original two (2). The current application for a one-story addition, proposes to replace two (2) existing cremators with three (3) cremators and add enough space to allow for one (1) additional cremator to be installed at a future date for a total of six (6). He noted that there are only 25 crematories in New Jersey and that this is the only facility

in Somerset County. Mr. Gilman provided testimony to show that the demand for cremations has increased significantly and is projected to exceed 50% of all final dispositions within the next few years. He stated that the new cremators are much more fuel efficient and surpass all environmental requirements.

**Exhibit A-1**, a colored version of Sheet A200 of plans prepared by D. Macartney Wilson AIA Architects & Associates PA, dated 03/22/2021, was entered into evidence and showed changes that had been made to the original plans based on comments made by the Board's professionals. Mr. Gilman pointed out an area of new landscaping which would replace unused pavement between the proposed addition and the existing parking area. Mr. Schley stated that this would remove some of the "vehicle surface" which generates "dirty runoff" and address comments made in the Environmental Commission's memo (05/25/2021). After a discussion about the revisions, two (2) straw polls were taken. The results indicated that the Board was not inclined to require the Applicant to supply a noise report for the existing generator or to place any restrictions on when the Applicant could exercise the generator.

**Exhibits A-2 through A-5**, color photos of the site taken by Mr. Gilman, were entered into evidence. **Exhibit A-2** showed the type of screening for the HVAC mechanicals on the roof of the mausoleum. **Exhibits A-3, A-4 and A-5** showed views of the mausoleum taken from the closest residential property on Countryside Drive and views of that property taken from the mausoleum in both summer and winter. They confirmed that the buffer provided by the existing 50' wide tree easement along the northern boundary line between the mausoleum and Countryside Drive significantly obscures the view of the mausoleum from the Countryside Drive residents.

Mr. Gilman stipulated to all applicable comments made in the memos from Mark Sylvester, Fire Official (06/02/2021), Mr. Schley (05/25/2021), Mr. Banisch (06/04/2021) and Mr. Plevier (05/28/2021).

Hearing no further questions from the Board or its professionals, Chairwoman Piedici opened the hearing to the public for questions of the witness.

Letitia Lum, 83 Mt. Airy Road, was duly sworn and commented that in the winter, lights from the mausoleum can be seen from her home. Mr. Gilman stated that the lighting had been approved by this Board however, he offered to work with her to mitigate the problem. Ms. Lum stated that the lights did not bother her and that she was simply making an observation.

Hearing no further questions, Chairwoman Piedici closed that portion of the hearing.

James O. Madsen, PE, engineer with the firm of Apgar Associates, Far Hills, NJ, was accepted by the Board as an expert in the field of civil engineering. He gave a description of the proposed addition noting that it would be constructed over existing pavement and would be farther away from the northern property line than the mausoleum itself. He then addressed the comments in the Environmental Commission's memo (05/25/2021) and stipulated to all of the applicable comments in Mr. Plevier's memo (05/28/2021).

Hearing no further questions from the Board or its professionals, Chairwoman Piedici opened the hearing to the public for questions of the witness or comments in general. Hearing none, that portion of the hearing was closed.

Mr. Osterman presented a brief summary and outlined the justification for approval of the application.

After deliberations, Mr. Damurjian moved to grant Preliminary and Final Site Plan approval subject to the conditions stipulated to by the Applicant during testimony and as stated during deliberations. Mr. Baumann seconded.

Roll call:           Aye:               Baumann, Damurjian, Fields, Manduke, Mastrangelo, Piedici  
                      Nay:               NONE

Motion carried.

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

Chairwoman Piedici advised the Board that the June 22, 2021 meeting and the July 6, 2021 meeting will be cancelled.

**ADJOURN**

Moved by Ms. Mastrangelo, seconded by Mayor Fields, all eligible in favor and carried, the meeting was adjourned at 9:04 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Planning Board

*Adopted as drafted 07-20-2021*

06/22/2021v2 dskpjd

**BERNARDS TOWNSHIP PLANNING BOARD**

**FELLOWSHIP SENIOR LIVING, INC.**

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

**APPLICATION #PB20-005**

**RESOLUTION MEMORIALIZING GRANT OF CONDITIONAL USE APPROVAL  
AND PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL WITH DESIGN  
EXCEPTIONS TO ALLOW CONSTRUCTION OF A BUILDING ADDITION AS WELL  
AS OTHER SITE IMPROVEMENTS**

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

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

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

**WHEREAS**, the Board has exclusive subject matter jurisdiction over the Application pursuant to N.J.S.A. 40:55D-20 in accordance with N.J.S.A. 40:55D-67, -46, -50 and -51; and

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

**WHEREAS**, a number of documents were submitted by the applicant, Board and Township experts and officials, as well as outside agencies, with regard to the application, 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 were on file and available for public inspection 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 Plans,” prepared by Marathon Engineering and Environmental Services, dated December 11, 2020, including sheets 1 through 14, which sheets are also identified as drawing nos. C0001, C0002, C0101, C0102, C0103, C0301, C0302, C0303, C1101, C1201, C1202, C1203, C1301, and C1302, respectively (the “**site plans**”),
2. “Architectural and Landscape Plans,” prepared by KDA Architects, dated November 23, 2020, including sheets A0.1 through A0.5, and L0.0, L0.1, L1.0 and L1.1 (the “**architectural plans**”),
3. “Stormwater Management Report,” prepared by Marathon Engineering and Environmental Services, dated November 23, 2020, revised February 12, 2021 (the “**stormwater report**”),
4. “Stormwater Management Facilities Maintenance Manual” prepared by Marathon Engineering and Environmental Services, dated November 23, 2020 (the “**SWFM manual**”),
5. Memorandum prepared by Marathon Engineering and Environmental Services, dated February 12, 2021, concerning Wetlands Applicability (the “**wetlands memo**”),
6. “Fire Service Plan,” prepared by Page Engineering Consultants PC, last revised November 13, 2018 (the “**fire service plan**”),
7. “ALTA/ACSM Land Title Survey,” prepared by Kennon Surveying Services Inc., last revised November 23, 2016 (the “**survey**”), and
8. “Site Lighting Calculations,” prepared by KDA Architects, dated February 12, 2021 (the “**site lighting calculations**”);

**WHEREAS**, the Board considered the application at a duly noticed public hearing on April 6, 2021 (held in person and also broadcast to the public with an option to call in), 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., and the Board was represented by Steven Warner, Esq.;

**WHEREAS**, the following fact and/or expert witnesses testified under oath during the hearing, were subject to cross-examination, and the testimony of these witnesses is part of the record in this matter:

1. David Danton, KDA Architects (Applicant's architectural expert),
2. David Fleming, Marathon Engineering and Environmental Services, Inc. (Applicant's engineering expert),
3. Brian G. Lawrence, President & CEO of Fellowship Senior Living, Inc. (Applicant's representative),
4. David Schley, PP, AICP (Township Planner),
5. David Banisch, PP, AICP (Board's planning expert), and
6. Larry Plevier, PE (Board's engineering expert);

**WHEREAS**, members of the public, including residents of Fellowship Village and Mrs. Pinson, participated in the hearing by asking questions of witnesses and/or offering sworn comments regarding the application;

**WHEREAS**, the following exhibits were entered into evidence during the hearing by the applicant, are on file with the Board, and are part of the record in this matter:

- A-1 Overall Exhibit,
- A-2 Exhibit Key Map – Fitness Center Addition,
- A-3 Fitness Center Addition,
- A-4 Fitness Center and Salon Addition Floor Plans,
- A-5 Fitness Center and Salon Addition Elevations,
- A-6 Fitness Center and Salon Addition Landscape Plan,
- A-7 Fitness Center and Salon Addition Views,
- A-8 Exhibit Key Map – Club/Locker Room Renovation,
- A-9 Club Room Renovations – Floor Plans and Elevations,
- A-10 Exhibit Key Map – Pond Deck Development Area,
- A-11 Ephesus Pond Deck,
- A-12 Lighting Plan,
- A-13 Exhibit Key Map – Outdoor Recreation Area,
- A-14 Outdoor Recreation Area,
- A-15 Exhibit Key Map – Spruce Grove Area,
- A-16 Spruce Grove Area,
- A-17 Exhibit Key Map – Walking Trail/Dog Park Area,
- A-18 Dog Park and Walking Trail,
- A-19 Overall Exhibit – Parking Modification Areas, and
- A-20 Parking Modification Areas;

**WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS AS REFERENCED ABOVE, AND AFTER GIVING APPROPRIATE WEIGHT TO ALL OF SAME, AND BASED ON THE BOARD'S UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE**

**PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**A. FACTUAL FINDINGS**

**1. The Property, Zoning, Prior Approvals, and Existing Improvements.**

As set forth above, the property is a 72.569-acre irregularly shaped lot situated in the R-2 zone. The property has frontage on Allen Road (County Route 652) and Martinsville Road (County Route 525) along its southeasterly corner. There are wetlands, wetland buffers, and stream buffers on the property. Residential development is a principal permitted use in the R-2 zone pursuant to ordinance sections 21-10.4.a.1.(a) and -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.” Ordinance section 21-10.4.a.3, however, allows certain conditionally permitted uses in the R-2 zone, and ordinance section 21-10.4.a.3.(e) allows CCRC’s as a conditionally permitted 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). 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.” Ordinance section 21-12.3.L was amended by Ordinance #2248 on October 29, 2013 to provide in section 21-12.3.L.5 that a CCRC “may include personal, cultural, religious and other ancillary services customary to a CCRC” and that “these services may include uses such as clinics, therapies, wellness and educational programs, theaters, performing arts programs, restaurants, and salons.” As set forth above, the Fellowship Village CCRC is situated on the property and is comprised of a number of buildings and related site improvements, including the community center, the health center building, parking areas, and stormwater management facilities. Fellowship Road provides access to the property from Allen Road. The majority of Fellowship Village was constructed after various approvals granted by the Board in 1993, 1994 and 1998. More recently, 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, and a significant expansion of the community center, health center, parking areas and stormwater management system in 2016. Fellowship Village is served by the public sewer and public water systems.

**2. The Application and Proposed Development.**

As set forth above, the applicant has made application to the Board, requesting preliminary and final major site plan approval, conditional use approval, and exceptions from certain site plan ordinance requirements, to allow construction of the proposed development consisting of the following:

a. **Fitness Center and Salon.** The proposed development includes a two-story, 14,447 square foot addition to the fitness center which will expand the fitness center on the upper story and create a salon on the lower level. The construction is proposed to include wall-mounted exterior lighting, new walkways and building entrances, and an underground chamber infiltration system to supplement the stormwater facilities.

b. **Club Locker Room Renovations.** The proposed development includes new men's and women's locker rooms, including an approximately 180 square feet addition to the women's locker room, interior renovations, and the use and conversion of one independent living unit into locker room space, which will reduce the overall number of independent living units from 257 to 256.

c. **Outdoor Trails and Observation Decks.** The proposed development includes approximately ¼ mile of walking trails, constructed of crushed stone and elevated boardwalk, in the southwesterly wetlands/meadow area of the property. The trails will include construction of seating areas and bird blinds. This aspect of the proposed development requires approval from the NJDEP and consent from the Township for relief from the existing conservation easement.

d. **Dog Park.** The proposed development includes a dog park adjacent to the new walking trails. The dog park will include a lawn area enclosed by a fence, a water fountain, a waste station, and related amenities.

e. **Recreation Courts.** The proposed development includes a bocce court, a shuffleboard court, and a pickleball court in an area near the existing swimming pool. The pickleball court is proposed to be enclosed by a 6' high fence; however, the Board determined that, at the applicant's election, the fence may be extended to up to 10' high without further approval, provided that the court, including fence, complies with the zoning requirements applicable to an accessory structure. The applicant also proposes a pergola to provide shade.

f. **Spruce Grove Improvements.** The proposed development includes replacement of an existing paved path with a crushed stone path and seating areas in the northerly portion of the property, amidst an existing mature grove of trees. The applicant also proposes 3.5-foot high stone piers, which the applicant agreed will be constructed within zone 2 of the existing stream buffer conservation area.

g. **Ephesus Pond Deck.** The proposed development also includes a 14.25-foot x 15-foot deck overlooking Ephesus Pond. The deck will include mounted lighting on the deck railing posts, and a connecting trail is proposed to connect the deck to the existing path.

i. **Parking Modifications.** Finally, the proposed development includes conversion of two existing ADA parking spaces to two standard spaces and the re-striping of parking areas in Antioch Court and Beersheba Court to yield an additional three parking spaces. Applicant currently employs 171 full and part time employees. The applicant's bases for the number of parking spaces proposed is as follows. Upon completion of construction, the applicant anticipates having 185 employees (including 165 full time and 20 part time). This represents an

increase in employees based on the following assumptions: (i) 9 new employees to be hired for the previously approved, but not yet completed health center, (ii) 2 new employees for the fitness center/salon, and (iii) 3 additional employees to meet anticipated growth in demand for medical/health services. Based on those assumptions, the total number of required parking spaces would be 613.1 spaces. The site plans include 617 parking spaces.

3. **The Board's Findings as to the Conditional Use Standards and Site Plan Ordinance Requirements Which Require Board Review and Approval.** The applicant must prove that the application, site plans, other plans and other documents submitted for approval as referenced above comply with a number of conditional use standards and site plan ordinance requirements which address various issues. If the application or any of the documents do not comply with all of the conditional use standards, the applicant would have to agree to amend the application and/or documents to comply in order for the Board to retain subject matter jurisdiction of the application. Alternatively, if the applicant did not wish to amend the application and/or documents to comply, the applicant would have to seek "d(3)" conditional use variance(s) from the Board of Adjustment as any "d" type variance would divest the Board of jurisdiction over the application. As set forth below in more detail, the application, site plans and other documents submitted for approval as referenced above comply with all of the conditional use standards so that the Board has subject matter jurisdiction of the application. The application does not comply, however, with all site plan ordinance requirements. This fact does not divest the Board of subject matter jurisdiction of the application as the Board is authorized to review and grant, where warranted, requests for exceptions from site plan ordinance requirements. In this application, the applicant has sought exceptions from certain site plan ordinance requirements as discussed below in greater detail. If the Board denies the requested exceptions, the application would have to be denied. If the Board grants the exceptions, the application could be granted provided that all remaining applicable site plan ordinance requirements are complied with. The Board's specific findings on the issues of compliance with the conditional use standards and as to the requested exceptions from the site plan ordinance requirements at issue, are as follows:

a. **General Requirements for Conditional Uses.** Pursuant to ordinance section 21-12.2, in considering any request for approval of a conditional use, the 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 proposed development to existing buildings and exiting 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. The Board

finds that all of the general requirements for conditional uses have been satisfied provided that the conditions set forth below are imposed and complied with.

b. **Specific Conditional Use Requirements for CCRC in the R-2 Zone.** Ordinance section 21-12.3.L contains specific requirements that must be adhered to for a continuing care retirement community in the R-2 zone. The Board finds from its review of the application, the site plans and other plans and documents, and the testimony provided at the hearing, that the applicant complies with all of the conditional use requirements set forth at 21-12.3(l)(1)-(17), for the reasons set forth below:

- (1) Applicant submitted the required Certificate of Authority as part of the application package.
- (2) Applicant submitted the required letter from the Department of Community Affairs that no lien has been filed against Fellowship Village.
- (3) Not applicable.
- (4) Fellowship Village includes independent living units, assisted living units, and nursing/long term care units.
- (5) Fellowship Village provides the uses set forth in this subsection, does not deny residents access to these uses, and sufficient parking is provided.
- (6) Applicant provided the relevant portion of the required Disclosure Statement.
- (7) Not applicable
- (8) Applicant complies with the age restriction requirement.
- (9) The accessory uses, both existing and proposed, are permissible.
- (10) The property complies with all the listed area, setback, and other bulk requirements.
- (11) Fellowship Village complies with the maximum and minimum number of units: 256 independent living units; 86 assisted living units; and 67 nursing/long term care beds.
- (12) All parking requirements are met.

- (13) Applicant remains compliant with the design and development regulations for multifamily residential buildings, as they remain unchanged.
- (14) Not applicable.
- (15) Applicant complies with the design and development regulations for other structures. The distance between the residential buildings and the common area building (criteria (a)) will be greater than 30' (even with the new fitness center addition) and remains compliant.
- (16) Applicant complies with the buffering and screening requirements.
- (17) Applicant complies with the requirements of this subsection as (a) Fellowship Village's water is supplied by NJ American Water Company, (b) its wastewater is treated by the Township of Bernards Sewerage Authority, and (c) Fellowship Village has frontage and direct access to Allen Road (County Route 652).

c. **Exceptions from the Site Plan Ordinance Requirements Governing Average Light Intensity to Allow for the Intensity to Exceed the Maximum Allowed in Certain Location.** Pursuant to site plan ordinance section 21-41.3, the maximum average maintained horizontal illumination at residential uses for vehicular roadways is 0.4, and for sidewalks, 0.2. Applicant proposes the following average intensities at the following locations: North Patio – 2.88fc; North Entrance Area – 3.21fc; South Entrance Area – 3.21fc; Southwest Entrance Area – 3.21fc; and Pond Deck – 2.05fc. The Board's findings as to the requested exceptions are as follows. Applicant provided testimony that the proposed lighting serves an important safety purpose and that it would be impracticable to reduce the lighting at areas of ingress and egress and in walking and seating areas, particularly in areas that will be traversed by senior members of the community. As such, the Board finds that it is reasonable and within the purpose and intent of the provisions of the site plan ordinance to grant the exceptions at issue. Specifically, the Board agrees with the applicant that the lighting proposes a legitimate safety purpose and the literal enforcement of the average lighting requirement is impracticable in these specific areas.

d. **Exception from Site Plan Ordinance Requirement for Six (6) Loading / Unloading Spaces.** In 2016, the Board granted an exception to allow one (1) loading space to serve the facility, whereas Ordinance section 21-39.2.a required a total of five (5) based on the total square footage of floor area. Due to the additional square footage proposed in this application, six (6) spaces would now be required. Applicant therefore again requests the exception to allow one (1) space, whereas six (6) are required. In 2016, the Board found that the applicant did not need all of the required loading / unloading spaces, and actually only needed one (1) space for safe and efficient loading and unloading. The Board finds that the same remains true;

the applicant only needs one (1) space for safe and efficient loading and unloading. As such, provided that the conditions set forth below are imposed and complied with, the Board finds that it is reasonable and within the purpose and intent of the site plan ordinance to grant the exception to allow the applicant to continue to provide only the one (1) loading / unloading space that it needs, rather than requiring five (5) additional spaces for no reason other than ordinance compliance. The Board specifically finds that the literal enforcement of the site plan ordinance requirement at issue is impracticable in this particular case because of peculiar conditions pertaining to the land in question, namely, the fact that the CCRC currently exists and has no reported loading / unloading issues and it would be unwise, imprudent and not sensible to add additional paved areas to provide additional loading / unloading spaces that are not needed for no reason other than ordinance compliance and that would create additional conflict points between trucks and senior pedestrians.

e. **Compliance with all Other Ordinance Provisions.** 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, architectural plans and 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 remaining applicable site plan ordinance requirements.

f. **Compliance with Matters Vital to Public Health and Specific Findings per Ordinance Section 21-54.8.a.1.** Provided that the conditions set forth below are imposed and complied with, the Board specifically finds in accordance with ordinance section 21-54.8.a.1 that all matters vital to the public health (provision of water, provision for sewage disposal, provision for stormwater drainage so that no additional peak runoff is discharged during a 100 year storm of 24 hour duration, and provision of an internal traffic circulation system designed to handle the traffic generated by the proposed development) will be adequately provided for and appropriately designed as part of the proposed development. The Board also specifically finds in accordance with ordinance section 21-54.8.a.1 that the proposed development is not inconsistent with the Township Master Plan, the plans respect the natural features of the site, with all environmentally sensitive lands being protected and trees respected, and that the plans do not require any density, bulk, use or any other “d” type variances.

## **B. LEGAL CONCLUSIONS**

1. **Conclusions as to the Exceptions.** The Board’s conclusions as to the requested exceptions from site plan ordinance requirements at issue are as follows:

a. **Standards for Considering the 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 subdivision or site plan approval “as may be reasonable and within the general purpose and intent of the provisions for 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.”

b. **Conclusions to Grant of Exceptions.** As set forth above in the factual findings, the Board found that the literal enforcement of the site plan ordinance requirements at issue is impracticable because of peculiar conditions pertaining to the property. The Board further found that granting the exceptions will be reasonable and within the general purpose and intent of the provisions for site plan review provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that it can and should grant the exceptions at issue, subject to the conditions set forth below being imposed and complied with.

2. **Conclusions as to Conditional Use Review and Preliminary and Final Site Plan Review.** The Board's conclusions as to conditional use review and preliminary and final site plan review are as follows:

a. **Standards for Conditional Use Review and Preliminary and Final Site Plan 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. A "conditional use" is a "use permitted in a particular zone, but only upon certain conditions." Omnipoint v. Bedminster Board of Adjustment, 337 N.J. Super. 398, 413 (App. Div. 2001), certif. denied, 169 N.J. 607 (2001). The Board must thus determine whether the proposed conditionally permitted use complies with all conditional use requirements set forth in the ordinance. 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." N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of the 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. Thus, if the application complies with all ordinance provisions, the Board must grant conditional use approval as well as site plan approval. Conversely, if the application does not comply with all ordinance provisions, the Board must deny approval. CBS Outdoor, Inc. v. Lebanon Planning Board / Board of Adjustment, 414 N.J. Super. 563, 582 (App. Div. 2010) (dealing with conditional use approval); Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010) (dealing with site plan approval). However, there are exceptions:

(1) The first exception is where an application does not comply with all ordinance regulations and/or requirements but the applicant requests relief in terms of variances or exceptions. In the event that the Board grants the relief to allow the ordinance deviation, the Board then must review the application against all remaining ordinance regulations and requirements and grant approval if the application complies with all such remaining ordinance provisions.

(2) The second exception is where the application does not comply with all ordinance regulations and requirements but a condition can be imposed requiring a change that will satisfy the ordinance provisions at issue. In that case, the Board can either grant approval on the condition that the application is revised prior to signing the plan to comply with

the ordinance provisions at issue or the Board can adjourn the hearing to permit the applicant the opportunity to revise the plans to comply with the ordinance provisions prior to the Board granting approval. However, there are exceptions to this exception:

(a) First, while N.J.S.A. 40:55D-46a allows the site plan and engineering documents required to be submitted to be in “tentative form” for “discussion purposes for preliminary approval,” including allowing architectural drawings to be in preliminary form, the Board cannot grant preliminary approval subject to later submission of additional information which is fundamental to an essential element of a development plan. The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater drainage, sewage disposal, water supply, and traffic circulation safety, which would include access and circulation for fire trucks. See, Field v. Franklin Twp., 190 N.J. Super. 326, 332-333 (App. Div. 1983) (“Certain elements – for example, drainage, sewage disposal and water supply – may have such a pervasive impact on the public health and welfare in the community that they must be resolved at least as to feasibility of specific proposals or solutions before preliminary approval is granted”), certif. denied, 95 N.J. 183 (1983); D’Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 83-84 (App. Div. 1992) (without percolation tests being submitted, stormwater drainage and septic disposal, matters vital to the public health and welfare, could not be resolved), certif. denied, 130 N.J. 18 (1992); Dowel Associates v. Harmony Twp., 403 N.J. Super. 1, 30-32 (App. Div. 2008), certif. denied, 197 N.J. 15 (2008) (upholding the trial court’s ruling that “feasibility is something less than permissibility,” and holding that essential elements of a development that are vital to public health and safety such as stormwater drainage and sewerage disposal must be resolved “at least as to feasibility of specific proposals” prior to preliminary approval being granted); Morris County Fair Housing Council v. Boonton Twp., 228 N.J. Super. 635, 642-645 (Law Div. 1988) (affirming a planning board’s denial of preliminary site plan approval for an affordable housing development because the applicant failed to calculate the stormwater flow so could not prove the feasibility of its stormwater management plan, which the court found was a fundamental element of the development and had to be resolved prior to preliminary approval).

(b) Second, 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, preliminary approval must also be denied. Field, 190 N.J. Super. at 333.

(c) Third, as the burden of proof is on the applicant, Ten Stary Dom v. Mauro, 216 N.J. 16, 30 (2013), an applicant is required to prove entitlement to an approval at the time of the hearing on the application. Promises from an applicant about future potential compliance is not permitted under the MLUL. CBS Outdoor, Inc. v. Lebanon Planning Board, 414 N.J. Super. 563, 582 (App. Div. 2010).

(d) Fourth, the Board cannot grant final approval subject to later submission of the required detailed drawings and specifications because they are required to be submitted ahead of time pursuant to N.J.S.A. 40:55D-50a, which provides for final approval of “detailed drawings [and] specifications” if application “conform[s] to the standards of all applicable ordinances and the conditions of preliminary approval.” See also, N.J.S.A. 40:55D-4

which defines “final approval” as the action of the Board taken “after all conditions, engineering plans and other requirements of have been completed or fulfilled . . . .” That said, boards do 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.”

b. **Conclusions as to Conditional Use Review and Preliminary and Final Site Plan Review.** As set forth above in the factual findings, provided that the Board grants the requested exceptions from the site plan ordinance requirements at issue, the Board found that the proposed development and plans referenced above along with all other documents submitted for approval will comply with all applicable zoning ordinance regulations, including conditional use standards, and all remaining applicable site plan ordinance requirements provided, however, that the conditions set forth below are imposed and complied with. As the Board has concluded that the requested exceptions can and should be granted, the Board further concludes that conditional use approval and preliminary and final site plan approval of the plans referenced above along with the other documents submitted for approval can and should be granted, subject to the conditions set forth below being imposed and complied with.

3. **Imposition of Conditions.** A land use board has 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). 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). See, 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). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a development approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), 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 Board concludes that the conditions set forth below are warranted on all of the above bases.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON APRIL 6, 2021 THAT THE FOLLOWING RELIEF IS GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

**C. RELIEF GRANTED**

1. **Grant of Exceptions from the Site Plan Ordinance Requirements for Average Intensity of Lighting to Allow for Greater Intensity than Permitted.** Subject to the conditions set forth below, the Board hereby grants exceptions from the requirement in site plan ordinance section 21-41.3 to permit the average intensity of the lighting in certain locations to exceed 0.2fc. More specifically, to allow average intensity as follows: 2.88fc at the North Patio; 3.21 fc at the North Entrance Area; 3.21 fc at the South Entrance Area; 3.21 fc at the Southwest Entrance Area; and 2.05 fc at the Pond Deck.

2. **Grant of Exception from Site Plan Ordinance Requirement for Six (6) Loading / Unloading Spaces to Allow Just One (1) Loading Space.** Subject to the conditions set forth below, the Board hereby grants an exception from the requirement in site plan ordinance section 21-39.2.a for six (6) total loading spaces to allow just one (1) loading space.

3. **Grant of Conditional Use Approval.** Subject to the conditions set forth below, the Board hereby grants conditional use approval for the proposed development as reflected on the plans referenced above after they are subsequently signed by the Board Secretary, and as reflected on the documents submitted for approval as referenced above after they have been revised in accordance with the conditions of the within approval.

4. **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 for the proposed development as reflected on the plans referenced above after they are subsequently signed by the Board Secretary, and as reflected on the documents submitted for approval as

referenced above after they have been revised in accordance with the conditions of the within approval.

#### **D. CONDITIONS**

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

Revisions to the documents referenced below shall be made to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and as required by the conditions set forth below, and to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Township Engineer and Township Planner, with the revisions being made to all of the documents and the site plans being signed no later than December 8, 2021 (which is six (6) months from the date the within resolution was adopted on June 8, 2021), and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the site plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to provide the applicant with the opportunity to revise the plans and 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.) Any dispute(s) concerning satisfaction of any conditions related to the revisions of the plans and documents 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 required revisions are as follows:

a. Revisions listed in the memo to the Board from Larry Plevier, PE, CME (Board Engineer), dated March 24, 2021, including:

Zoning & Overview Plan, Sheet 2:

- i. A parking count calculation shall be provided for the Parking Analysis table to demonstrate compliance with ADA design standards for ADA parking stalls, as the project proposes to remove two (2) existing ADA stalls in the Main Entrance Parking Modification Area.
- ii. The project proposes the construction of five (5) new standard parking stalls. Therefore, the Parking Analysis table shall identify between the existing parking stall counts and the proposed parking stall counts.

Site Plan - Fitness Center Addition, Sheet 3:

- i. The proposed width for the new concrete walkway shall be provided on the plan.
- ii. The proposed material for the stairway and lower landing area at the southwest corner of the new Fitness Center shall be identified on the plan.
- iii. The proposed elevated patio with railing on the north side of the Fitness Center shall be identified on the plan.

- iv. The proposed removal of the existing walkway shall be identified on the plan for the installation of the new concrete walkway at the southeast corner of the new Fitness Center.

Site Plan - Recreation & Spruce Grove, Sheet 4:

- i. The proposed concrete curb with weep holes for the new bocce court shall be identified on the plan.
- ii. The proposed pergola for the pool area shall be provided on the plan.

Site Plan — Dog Park & Walking Trails, Sheet 5:

- i. Proposed spot grades and/or notes about pitching the new asphalt pavement to the existing storm inlets shall be provided on the Antioch Court Parking Modification and the Beersheba Court Parking Modification inset plans.
- ii. Proposed ADA curb ramps with detectable warning surfaces and flush curbing shall be provided for the new concrete sidewalks for both the Antioch Court Parking Modification plan and the Beersheba Court Parking Modification plan.

Grading & Utility Plan — Fitness Center Addition, Sheet 6:

- i. The proposed roof drain system on the plan does not correspond with the roof pitch as shown on the architectural elevation views. The proposed roof line for the new Fitness Center Addition appears to direct roof runoff toward the middle of the new addition. Therefore, the roof leaders as shown on the plan will not collect roof runoff for conveyance to the subsurface detention basin. The plan shall be revised accordingly.
- ii. The Fitness Center Addition appears to conflict with existing roof drainage system piping for the Community Center. The plan shall be revised to depict relocated and/or reconstructed existing roof drainage system components for the Community Center.
- iii. The proposed subsurface stormwater BMP basin appears to conflict with the existing roof drainage system pipe network for the Community Center. The plan shall be revised to depict relocated and/or reconstructed existing roof drainage system components for the Community Center.
- iv. The Fitness Center Addition conflicts with an existing cleanout assembly. If the existing cleanout is for an existing sanitary sewer lateral, the applicant shall address the conflict with the existing sanitary sewer. If the cleanout is for the existing roof drainage system, the plan shall be revised to depict relocated and/or reconstructed existing roof drainage system components.
- v. The existing 105 linear feet of 24" diameter RCP storm sewer running along the proposed west wall of the Fitness Center Addition shall be identified as being removed.
- vi. In accordance with the soil log information for B-1, the seasonal high water table elevation in the area of the proposed subsurface BMP basin is approximately 244', and the proposed bottom of the stone field for the BMP is elevation 240.75'. In accordance with the NJ Stormwater Best Management Practices (BMP) Manual, the infiltration basin requires a two (2) foot separation from the bottom of the basin to the seasonal high groundwater elevation. The discrepancy shall be addressed.

- vii. The plan shall identify the existing storm manhole as being reconstructed to accommodate the proposed 24" diameter RCP and removal of the existing 24" diameter RCP storm sewer.
- viii. The proposed storm sewer network appears to be back-pitched with the proposed storm manhole which is downstream of the storm inlet and west of the proposed Fitness Center Addition as the low point. The applicant shall verify the storm sewer design and either revise the plans to provide positive storm sewer pitch to the existing downstream network or provide information on the current design which will surcharge the proposed inlet as the point of discharge.
- ix. The proposed slope gradient for the storm sewer pipe run between the low-point manhole (identified above) and the doghouse storm manhole does not correspond with the proposed invert elevations and pipe run length. The discrepancy shall be addressed.
- x. Additional proposed spot grades and top of wall elevations shall be provided near the eastern retaining wall for the lower level entry point at the southwest corner of the new Fitness Center Addition.
- xi. The proposed elevations along the west wall of the Fitness Center Addition has 2.2' of fill at the southwest corner and 3' of fill at the northwest corner of the building, but the architectural plans depict windows and a flat grade along the west wall of the Fitness Center Addition. The discrepancy shall be addressed.
  - a. Information shall be provided on the plan for the two (2) proposed manholes associated with the subsurface BMP basin for the both the upstream and downstream ends.
- xii. The new doghouse storm manhole provides an invert elevation of 243.25' for an 18" pipe, but the plans do not propose any 18" diameter storm sewer. The discrepancy shall be addressed.
- xiii. Profiles for the proposed storm sewer pipe runs shall be provided, and all profiles shall depict any applicable utility crossings.
- xiv. In accordance with the NJ Stormwater BMP Manual, an inspection port extending into the subsoil shall be provided for the subsurface infiltration BMP, and the plan shall be revised to identify the inspection port with a note regarding extending the inspection port into the subsoil.

Grading & Utility Plan — Recreation & Spruce Grove, Sheet 7:

- i. In accordance with the detail on the architectural plans, the proposed pickleball court shall have a 1.0% cross slope toward the stormwater BMP basin, and the plans, including the proposed spot grades, shall be revised accordingly.
- ii. The two (2) existing apparent sanitary sewer lateral cleanouts conflicting with the bocce court, including one (1) in the court and one (1) in the proposed concrete walk area, shall be reconstructed within a cast iron access frame and cover box. The plan shall be revised accordingly.
- iii. The proposed surface infiltration basin BMP shall have a minimum six (6) thick sand bottom in accordance with the NJ Stormwater BMP Manual, and the plan shall be revised accordingly.
- iv. The Stormwater Management Report indicates a 15' long broad-crested weir at elevation 248.85', but the plan does not appear to depict a weir or spillway for the

basin. The only apparent location for a spillway weir would be on along the west side of the surface infiltration BMP toward the existing low points with storm inlets. However, the proposed grading shall clearly depict an overflow weir condition(s) at this location. The discrepancy shall be addressed.

Grading & Utility Plan — Dog Park & Walking Trails, Sheet 8:

- i. The proposed width of the asphalt pathway shall be provided on the Deck Overlook Plan View.

Site Details, Sheet 9:

- i. A storm inlet detail shall be provided.
- ii. An asphalt walkway detail shall be provided.
- iii. A retaining wall detail shall be provided.
- iv. A cross section detail for the proposed surface infiltration basin shall be provided.
- v. An ADA curb ramp detail shall be provided.
- vi. A detectable warning surface detail shall be provided.
- vii. A flush curb detail for the ADA curb ramp shall be provided for the proposed block curbing.
- viii. A detail for the access box for sanitary sewer cleanouts shall be provided.
- ix. A parking stall pavement section detail shall be provided.
  
- x. The details and section views for the ADS stormwater chamber details shall show and identify filter fabric for the top and sides of the surrounding stone field in accordance with the NJ Stormwater BMP Manual.

Stormwater Management Facilities Maintenance Manual:

- i. Section III.B.4 of the Maintenance Manual shall be revised for dewatering operations to include a reference to the implementation of temporary soil erosion and sediment control measures (i.e. haybales, filter bags, etc.) during any required dewatering operations.
- ii. Note 1 for the SWMF Maintenance Equipment and Material Costs tables in the Manual shall be revised to reference 2020, which is the date of the report.
- iii. The Manual shall include a reference and narrative on the proposed subsurface infiltration basin system, and the Manual shall include an appendix with operation and maintenance material provided from the system manufacturer for the subsurface storage / infiltration chamber BMP.

Stormwater Management Report:

- i. In accordance with the hydrologic and hydraulic (H&H) model, the proposed impervious surface for the project has an overall total aggregate value of 12,115 square feet or 0.278 acres. Therefore, the project is defined as a Major Development, which is creation of one-quarter acre or more of regulated impervious surface since February 2, 2004, and must comply with the rules of N.J.A.C. 7:8 — Stormwater Management.

- ii. The only routing device for the proposed stormwater BMP basin for the Fitness Center Addition is exfiltration into the surrounding soils. However, the site plan and details depict a pipe connection to the downstream system with a 24" diameter discharge pipe at elevation 244.00', which would be a secondary outflow device. The discrepancy shall be addressed.
- iii. Review comment C.5.f above shall be addressed regarding the minimum required two (2) foot separation from the seasonal high groundwater table elevation and the bottom of the infiltration BMP for the subsurface ADS storage chamber system.
- iv. Soil permeability testing in accordance with Chapter 12 — Soil Testing Criteria of the NJ Stormwater BMP Manual shall be provided to justify the use of the 1" per hour exfiltration rate for the H&H model for both proposed infiltration BMPs.
- v. The proposed walkway areas for the Fitness Center Addition, including the elevated patio area, are not tributary to the proposed subsurface BMP without a collection or conveyance storm sewer. The H&H model indicates that the proposed walkways are tributary to the infiltration BMP for the Fitness Center Addition, and the discrepancy shall be addressed.
- vi. The applicant shall verify that the proposed contributory area for walkways in the H&H model for the Fitness Center Addition includes the area of the elevated patio area on the north side of the addition.
- vii. In accordance with the NJ Stormwater BMP Manual, a second profile pit shall be completed within the footprint of the stormwater BMP for the Fitness Center Addition to verify the seasonal high groundwater table and for soil permeability testing.
- viii. In accordance with N.J.A.C. 7:8-5.2.(h), the engineer shall address groundwater mounding with an analysis for the infiltrating of stormwater with the proposed stormwater BMPs, including any impacts on proposed or existing foundations for adjacent structures.
- ix. To accurately size the proposed surface infiltration BMP basin near the proposed recreational courts, the H&H model shall consider all tributary upstream drainage areas including upstream lawn areas contributing runoff volumes to the proposed BMP basin.
- x. The 24" diameter outlet pipe for the subsurface detention basin is located 3.25 feet above the bottom of the stone field, and the NJ Stormwater BMP Manual only allows a maximum depth of two (2) feet of stored runoff for exfiltration from a infiltration BMP. The discrepancy shall be addressed.
- xi. In accordance with N.J.A.C. 7:8-5.3, the Stormwater Management Report shall be revised to include narrative on the compliance with Green Infrastructure standards.
- xii. In accordance with N.J.A.C. 7:8-5.4, the Stormwater Management Report shall be revised to include narrative and calculations for compliance with groundwater recharge standards.

b. Revisions listed in the letter to the Board from Mark Sylvester, Fire Official, dated March 4, 2021, including:

- i. Install an automatic fire sprinkler system in the fitness center addition as per NFPA 13.

- ii. Add a note to the plans stating that the fitness center must be registered with the NJ Division of Fire Safety as a Life Hazard Use. Ensure this registration is completed prior to opening. This must be completed in conjunction with the Fire Official.
- iii. Add “No Parking Fire Lane” signs as required along rear access road adjacent to the addition.
- iv. Add a note to the plans stating that the applicant shall contact the Fire Official to arrange a walk-through of the fitness center addition just before completion of construction to allow for emergency pre-planning by the fire company.

c. Revisions listed in the memorandum to the Board from David Schley, PP, AICP (Township Planner), dated March 25, 2021, including:

- i. Sheet 1 – Amend the Sheet Index to include the landscape, lighting, and architectural plans.
- ii. Sheet 2 – Amend General Site Note 9 to include: “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.”
- iii. Sheet 2 – The Parking Analysis shall be amended to specify the number of existing parking spaces, and the applicant shall check/confirm the existing and proposed parking counts.
- iv. Sheet 2 – Add schedules/analyses showing required/existing/proposed handicapped parking and loading space information.
- v. Sheet 3 – Add a tree removal/replacement schedule, and add a note confirming that the fitness center addition is the only project area where trees will be removed (or revise the plans to show tree removal in other areas). The proposed removal of six 10” caliper trees requires 12 replacement trees. As shown on the landscape plans, the applicant proposes to plant 37 qualifying replacement trees.
- vi. Sheet 3 – Add the following tree replacement/preservation notes:
  - a. All construction activity shall comply with the tree removal and protection standards of 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.
- vii. Sheets 3, L0.0, A0.1 & A0.2 – Show/label the proposed fitness patio, which appears to be mentioned only in the Building Area Summary on sheets A0.1 and A0.2.
- viii. Sheet 4 – Check/confirm the dimensions in the main entrance parking modification plan, where two handicapped parking spaces totaling 21’ wide are shown to be restriped as two 11’ wide regular spaces. Specify removal of the handicapped parking signage, and removal/restoration of the ramp/depressed curb.
- ix. Sheet 4 – In the Spruce Grove plan, show/label zone one (25’ wide along the pond) and zone two (50’ added to zone one) of the 75’ wide stream buffer conservation area, and confirm that all proposed stone piers are not within zone one. The piers are permitted only in zone two.
- x. Sheets 4 & 5 – In the Spruce Grove and Deck Overlook plans, add a note confirming that the water body in each location does not require a riparian zone pursuant to NJDEP Flood Hazard Area Control Act Rules, or show the required riparian zone and document compliance with all applicable rules.
- xi. Sheets 4 & L0.0 – In the Spruce Grove plan, show/label the low level illumination indicated in the application narrative. The plans appear to show existing bollard lights.
- xii. Sheets 4, A0.2 & A0.5 – Show/label the proposed pergola, which appears to be shown only on the landscape plans.
- xiii. Sheet 5 – Show parking space and sidewalk dimensions in the parking modification plans.
- xiv. Sheet A0.2 – Amend the Building Area Summary to identify the floor area of the residential unit that will be converted to men’s club locker room.
- xv. Sheet A0.3 – In the Key Plan, revise the label/arrow for the west side elevation.
- xvi. Sheets A0.3 & A.05 – Identify colors of proposed exterior building materials.
- xvii. Add notes to the appropriate plan sheet stating the existing Detention Basin, Drainage & Access Easement shall be amended to reflect the proposed stormwater management facilities, and the existing Conservation Easement shall be amended if deemed necessary by the Township to reflect any construction within wetlands and wetlands transition areas approved by NJDEP.

d. Comments by Board Members During the Hearing regarding revision of the Boardwalk/Trail Location and Bird Blind Location and Extension of Fence:

(1) Upon consultation with applicant's neighbor, Mrs. Pinson, applicant has agreed to relocate the bird blind that was proposed to be near the property line between the property and Mrs. Pinson's home on Block 9401, Lot 8. Specifically, the bird blind shall be moved north and west to a location that is near a proposed bend in the trail, closer to Block 9401, Lot 7.

(2) In addition, to provide greater screening, the existing wood fence along the property line of Block 9401, Lot 8 shall be extended approximately 50 feet to the agreed upon pine tree, which served as an agreed upon marker between applicant and Mrs. Pinson.

(3) Finally, the proposed trails shall be shifted slightly to the north so that no portion of the trail will be within 50 feet of the property line to Block 9401, Lot 8.

e. Other Plan Revisions. The following additional plan revisions shall be made:

(1) Applicant shall revise the plans to provide a detail for the proposed stormwater basin system.

(2) Applicant shall revise the grading plans to provide additional contours around the fitness center and Ephesus Pond deck walkways and shall adjust the location of the proposed walkways, if practicable, to minimize the slope of the walkways.

2. Samples of Building Façade Materials. Applicant shall provide samples of the building façade materials to the Township Engineer prior to commencement of construction. The materials shall be reasonably similar to the materials shown on the application plans or will stylistically match the existing facades of the buildings.

3. Approvals Related to the Trail System. Applicant shall obtain all required approvals and/or permits from the New Jersey Department of Environmental Protection and the Township of Bernards to construct the trail system (the "**additional walkway approvals**"). This shall include consent from the Township under the existing Conservation Easement that was previously granted for the area in which the trails will be constructed and may require an amendment to the Conservation Easement. A delay in the receipt of the additional walkway approvals, presuming all other conditions have been fulfilled, shall not prohibit applicant from commencing construction on the other proposed improvements that do not impact the conservation easement area or the regulated wetlands.

4. Emergency Access Agreement. Applicant shall make a request to the owner of property located at Block 9301, Lot 32 to enter into a formal agreement to allow for shared emergency access between the properties. Although the Board encourages the parties to enter into a formal agreement, the applicant's request to the other property owner is sufficient to fulfill this condition of approval.

5. **Fire Lanes.** Applicant shall repair the fire lanes adjacent to and west of the main campus building once construction has been completed.

6. **Silt Stockings for Soil Erosion.** Applicant shall use silt stockings as a mechanism to prevent soil erosion during construction.

7. **Design, Construction and Location of Improvements.** The applicant shall be required to design, construct and locate all elements of the proposed development and all improvements in substantial conformity with the plans referenced above after they have been revised in accordance with the conditions set forth in the within resolution.

8. **Landscaping to Conform to Landscaping Plan and Be Maintained.** All landscaping on the property, after installation of the additional landscaping shown on the plans and as required by the conditions of the within resolution, shall conform to and be in accordance with the landscape plan approved and signed by the Board, which landscape plan shall include any and all revisions required by the conditions set forth in the within resolution. 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 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.

9. **Night Light Test.** In lieu of the Board's standard night light test condition, the following condition shall be complied with. Applicant shall provide copies of the light fixture manufacturer specifications for all new exterior light fixtures to the Township Engineer for review and approval prior to installation of the new light fixtures. After installation of the new exterior light fixtures, the applicant shall provide written certification that the installed fixtures are in accordance with the approved manufacturer specifications.

10. **Submission of Digital Plans.** The applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department.

11. **Affordable Housing Development Fees Pursuant to Ordinance Section 21-86.** The within approvals may be subject to affordable housing development fees pursuant to ordinance section 21-86, as applicable. In this case, the applicant may be required to pay an affordable housing non-residential development fee into the Township's affordable housing trust fund as required by applicable law, consisting of a payment of 2.5% of the increase in assessed value of the property after the installation of the improvements, 50% of which fee is payable prior to the issuance of a construction permit, and 50% of which fee is payable prior to the issuance of a certificate of occupancy, completion or approval (whichever is applicable). Nothing in this condition shall prohibit the applicant from claiming any statutory exemptions from paying the non-residential development fee, such as any applicable exemptions for recreational facilities, community centers, or senior centers.

12. **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 amended Detention Basin, Drainage & Access Easement and any required amended Conservation Easement, 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 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. The amended Detention Basin, Drainage & Access Easement shall include the SWFM manual, which shall be subject to review and approval by the Board Engineering Expert. All such documents shall be recorded prior to issuance of any zoning and/or construction permits for the portion of the proposed development impacted by the easement. Upon completion of the recording process, the recorded easement(s) shall be transmitted to the Township Clerk for maintenance with other title documents of the Township.

13. **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).

14. **Pre-Construction Meeting.** The applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity.

15. **Time to Obtain Construction Permits and Commence and Complete Construction.** The applicant shall apply for and obtain a construction permit(s) for all components of the proposed development by June 8, 2023 (which is within two (2) years of the date the within is adopted on June 8, 2021). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit(s), the within approvals shall automatically expire and become null and void. The applicant shall have 18 months from the date of the issuance of each construction permit to commence construction and obtain a permanent certificate of occupancy, completion or approval (whichever is applicable). If during said 18-month period(s), 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.

16. **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.

17. **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.

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**VOTE ON MOTION DULY MADE AND SECONDED ON APRIL 6, 2021 TO GRANT THE EXCEPTIONS:**

**THOSE IN FAVOR: ASAY, FIELDS, ESPOSITO, CRANE, DAMURJIAN, McNALLY, MANDUKE, MASTRANGELO & PIEDICI.**

**THOSE OPPOSED: NONE.**

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**VOTE ON MOTION DULY MADE AND SECONDED ON APRIL 6, 2021 TO GRANT CONDITIONAL USE APPROVAL AND PRELIMINARY AND FINAL SITE PLAN APPROVAL:**

**THOSE IN FAVOR: ASAY, FIELDS, ESPOSITO, CRANE, DAMURJIAN, McNALLY, MANDUKE, MASTRANGELO & PIEDICI.**

**THOSE OPPOSED: NONE.**

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The above memorializing resolution was adopted on June 8, 2021 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
ASAY				X
FIELDS	X			
ESPOSITO			(No longer a member)	
CRANE	X			
DAMURJIAN	X			
McNALLY				X
MANDUKE	X			
MASTRANGELO	X			
PIEDICI	X			

I, Cyndi Kiefer, Secretary to the Planning Board of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Planning Board on June 8, 2021.

**CYNDI KIEFER, Board Secretary**