

TOWNSHIP OF BERNARDS **PLANNING BOARD**

MINUTES **REGULAR SESSION v3** December 7, 2021

Chairwoman Piedici called the meeting to order at 7:30 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 PM and no new witnesses or testimony heard after 10:30 PM."

ROLL CALL:

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

Moved by Ms. Manduke, seconded by Committeeman McNally, all eligible in favor and carried, that the absence of Mayor Fields be excused.

APPROVAL OF MINUTES

November 3, 2021 - Regular Session - On motion made by Ms. Mastrangelo and seconded by Ms. Manduke, all eligible in favor and carried, the minutes were adopted as *revised*. Ineligible: Eorio (absent)

APPROVAL OF RESOLUTIONS

Moreira, F./Araujo, S.; Block 704, Lot 2; 37 Parkview Avenue; Conditional Use Variance, Bulk Variance; PB21-004 (approved) – Ms. Mastrangelo moved approval of the resolution as drafted. Mr. Baumann seconded.

Roll call: Aye: Baumann, Crane, Damurjian, Eorio, McNally, Mastrangelo, Piedici
Nay: NONE
Ineligible: Asay, Manduke (all absent)

Motion carried.

LANDSCAPING AND LIGHTING COMMITTEE REPORT

Fairmount Cemetery Association of Newark and Somerset Hills; Block 2301, Lots 12 & 18; 95 Mount Airy Road; PB19-007 – Mr. Baumann advised the Board that he, Mr. Damurjian and Ms. Mastrangelo had visited the site on 10/25/2021 and found that the landscaping and exterior lighting were consistent with the conditions of the resolution.

MASTER PLAN REVIEW – Chapter VI – Community Facilities Plan Element

Mr. Banisch stated that the revisions to this element discussed by the Board during its 10/19/2021 meeting had been incorporated into the second draft of the element which was distributed with his memo dated 12/05/2021. The Board made additional suggestions to be included in the final draft to be presented at the next meeting (01/18/2022). He stated that he had created a schedule so that the Board could complete the Master Plan update by late 2022 and that a public meeting would be held to allow for public comment prior to adoption of the plan.

Mr. Banisch advised the Board that due to a recent Municipal Land Use Law amendment, the Land Use Plan Element must be revised to include a climate change-related hazard vulnerability assessment and he opined that this would involve significant modifications. At the Board's suggestion, he agreed to contact sources such as Township Administrator Pat Monaco, the Township Police Department and JCPL for information.

In response to a question from Chairwoman Piedici, Mr. Banisch stated that the current Farmland Preservation Plan Element, adopted prior to 2010, does not qualify for funds because it is outdated. In the past, the Township had attempted to acquire land through the Farmland Preservation program but because there was a large discrepancy between the actual value of property and the amount of money offered through this program, the Township had to contribute a considerable amount of money in order to secure property. A straw poll indicated that the Board wanted more information before deciding whether to update the element in order to be eligible for funding and Mr. Banisch agreed to provide that at the 01/18/2022 meeting.

Chairwoman Piedici opened the meeting to the public for comment and the following people commented:

- Todd Edelstein, 172 Riverside Drive – scope of the climate change-related vulnerability assessment

Hearing no further comments, that portion of the meeting was closed.

Chairwoman Piedici announced that the December 21, 2021 Planning Board meeting would be cancelled.

Mr. Drill, Mr. Banisch and Mr. Schley left the building.

EXECUTIVE SESSION

Resolution authorizing a closed session: Discussion of conditions and rates for the 2022 Board Professionals

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

Moved by Committeewoman Asay, seconded by Mr. Crane, all eligible in favor and carried, to recess into Executive Session.

* * * *The Open Session was recessed at 8:30 PM* * * *

Moved by Committeewoman Asay, seconded by Committeeman McNally, all eligible in favor and carried, to reconvene the Open Session of the meeting.

* * * *The Open Session was reconvened at 8:36 PM* * * *

Chairwoman Piedici advised the public that the Board voiced no objections to retaining its current Professionals for 2022.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

Moved by Mr. Crane, seconded by Committeewoman Asay, all eligible in favor and carried, the meeting was adjourned at 8:36 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Planning Board

Adopted as amended 01/18/2022

12/13/2021 dskpjd

BERNARDS TOWNSHIP PLANNING BOARD

**FERNANDO MOREIRA AND SONIA ARAUJO
BLOCK 704, LOT 2
37 PARKVIEW AVENUE**

APPLICATION NO. PB-21-004

**RESOLUTION MEMORIALIZING GRANT OF CONDITIONAL USE APPROVAL TO
ALLOW AN ACCESSORY APARTMENT IN THE BASEMENT OF AN EXISTING
DWELLING WITH “C(2)” FRONT YARD PARKING VARIANCE**

WHEREAS, Fernando Moreira and Sonia Araujo (the “**applicants**”) are the owners of certain property located in the Township of Bernards (the “**Township**”) having an address of 37 Parkview Avenue and being designated on the Township tax maps as Block 704, Lot 2 (the “**property**”), and the property, which is a 0.8-acre corner lot having frontage on both Parkview Avenue and Morristown Road, is situated in the R-6 Residential zone district (the “**R-6 zone**”), and is developed with a single family residential dwelling (the “**dwelling**”) which is the applicants’ residence but that the dwelling also contains an apartment constructed by prior property owners without permits/approvals (the “**apartment**”);

WHEREAS, the applicants submitted an application dated July 20, 2021 (the “**application**”) to the Bernards Township Planning Board (the “**Board**”) seeking after-the-fact conditional use approval to allow the apartment use to continue in the dwelling as a conditionally permitted accessory apartment (the “**proposed accessory apartment**”) and to allow certain improvements to portions of the dwelling to be made to bring the apartment into conformity with the conditional use standards required for a conditionally permitted accessory apartment, with the proposed improvements consisting of changes to the northwesterly facade of the dwelling, removal of garage doors and creation of an open-air entry, replacement of an existing rear deck, and incidental patio/walkway improvements (the “**proposed improvements**”), with the upper level of the dwelling to be occupied by the applicants as their residence and the lower level / basement of the dwelling to contain the accessory apartment to be occupied by the applicants’ (Ms. Araujo’s) mother (the “**proposed use**”), along with a “c(2)” variance to allow more than one parking space in the front yard (on single family lots of 30,000 square feet or more in area, no more than one parking space is allowed in the front yard);

WHEREAS, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:55D-67, 60 and 70c;

WHEREAS, a number of documents were submitted with regard to the application by the applicants, Board and Township experts and officials, 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 (the “**plans**”) for which Board approval is sought, which plans have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Floor plans consisting of drawings A-101 (titled “Proposed Plans”) and EX-101 (titled “Existing Conditions”) dated June 13, 2021 (the “drawings”), and
2. Plan with aerial map/photos (Drawing T-101) dated August 10, 2021 (the “overall plan”);

WHEREAS, the Board held a duly noticed public hearing on the application on September 21, 2021, with affidavits of publication and certified mail service of notices of the application being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, and during which hearing the applicants appeared pro se and the Board was represented by John P. Kaplan, Esq. (substituting for Jonathan E. Drill, Esq.);

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

1. Fernando Moreira (applicant),
2. Sonia Araujo (applicant), and
3. David Schley (Township planner),

WHEREAS, no exhibits were entered into the record;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS ON FILE WITH THE BOARD, AND THE TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS

1. **The Property, Existing Improvements and Zoning.** As set forth above, the property is a 0.8-acre corner lot fronting on both Parkview Avenue and Morristown Road and contains a dwelling. The dwelling is a bilevel structure containing an apartment on the lower level / basement level with a kitchen, living room, one bedroom, one bathroom, a laundry area, and a private entrance. The upper level of the dwelling is the applicants’ residence. The apartment was constructed by prior property owners without permits/approvals. The property is largely obscured from Morristown Road by existing vegetation. Single family dwellings are principal permitted uses in the R-6 zone. Ordinance section 21-10.4.a.3(d) provides that an accessory apartment within a single family residence is a conditional use in the R-6 Residential

Zone. However, accessory apartments are subject to the conditional use standards set forth in §21-12.3.h, which are as follows and must be complied with for an accessory apartment to be conditionally permitted (if any of the conditional use standards are not complied with, the accessory apartment would be prohibited and would require a “d(3)” conditional use variance from the Board of Adjustment):

§21-12.3.h.1. The number of apartments within a single-family residence shall be limited to one and shall be located within the principal building.

§21-12.3.h.2. Not more than 25% of the floor area of the principal building may be used for the apartment.

§21-12.3.h.3. The applicant shall demonstrate that adequate off-street parking is available for the combination of the principal residential use and the apartment.

§21-12.3.h.4. The exterior appearance of the principal structure shall not be substantially altered or its appearance as a single-family residence changed.

§21-12.3.h.5. The minimum size of apartments shall conform to FHA minimum unit size by bedroom count.

§21-12.3.h.6. The occupants of the apartment shall be limited to the mother, father, son, daughter, brother, sister, grandparent (in any degree) and/or grandchild (in any degree), together with their respective spouses and children, of one of the principal occupants of the single-family residence.

§21-12.3.h.7. At such time as the apartment becomes unoccupied, or at such time as the occupants of the apartment do not, or no longer, bear the requisite relationship (by blood or marriage) to a principal occupant of the single-family, the conditional use approval shall terminate. In the event that ownership of the premises changes, there shall be a rebuttable presumption that such requisite relationship no longer exists.

§21-12.3.h.8. The owner of the premises which has been granted approval for such conditional use shall certify annually, on a form provided by the Zoning Official, that the conditions for the conditional use are still being satisfied.

2. **The Application and Proposed Improvements.** As set forth above, the application seeks conditional use approval to construct the proposed improvements to the dwelling and to approve after-the-fact the apartment as a conditionally permitted accessory apartment for use and occupancy by Mrs. Araujo’s mother. As also set forth above, the proposed improvements consist of changes to the northwesterly facade of the dwelling, removal of garage doors and creation of an open-air entry, replacement of an existing rear deck, and incidental patio/walkway improvements. As proposed, the accessory apartment will occupy 665 square

feet on the lower level / basement of the dwelling. The applicants' residence – the principal dwelling unit (i.e., the applicants' living space) – will occupy the entire upper level of the dwelling, but also portions of the lower level, including a nearly completed “man-cave” area which is being created by renovating a former two-car garage. The principal dwelling unit will contain a total floor area of 2,407 square feet. As also set forth above, the application also seeks a “c(2)” variance from ordinance section 21-22.1.b.2(a), which provides that, “no more than one required parking space for single-family detached dwelling units on lots of 30,000 square feet or more in area shall be located in a front yard.” All parking required for the dwelling and the accessory apartment is proposed to take place in the existing driveway, which is located in the front yard (due to the fact that the lot is a corner lot), thus necessitating a “c” variance. The applicant applied for a “c(2)” or so-called benefits v. detriments variance to allow the parking to be located in the front yard.

3. **Findings as to “C(2)” Front Yard Parking Variance.** The Board's findings as to the positive and negative criteria of the “c(2)” front yard parking variance are as follows:

a. **Findings as to the Positive Criteria of the “C(2)” Front Yard Parking Variance.** As to the positive criteria of the “c(2)” front yard parking variance, the Board finds as follows. First, the Board notes and finds that the property is a corner lot with two front yards. As such, while parking occurs behind the front wall of the dwelling, it is technically located in a front yard due to the dual frontage. Second, the Board finds that the proposed driveway as configured represents a better zoning alternative for the property than a conforming design, since a more conforming design would require additional impervious coverage on the property to locate the parking out of the front yard at issue, and would place the driveway closer to the neighbors' homes to the side and rear. Third, the Board finds that parking in the front yard in this particular case will be more aesthetically pleasing than providing for parking in a more conforming location which would be closer to the neighbors' homes. As such, the Board finds that the parking in the existing driveway which is located in a front yard as proposed promotes the following purposes of zoning set forth in the MLUL in this particular case, but provided that the conditions set forth below are imposed and complied with: N.J.S.A. 40:55D-2a (promoting the general welfare by not requiring additional impervious coverage and keeping the parking further away from the neighbors' homes) and N.J.S.A. 40:55D-2i (promoting a desirable visual environment by, again, not requiring additional impervious coverage and keeping the parking further away from the neighbors' homes). The Board further finds that these zoning benefits are community wide, public, benefits and not simply a private benefit to the applicants.

b. **Findings as to the Negative Criteria of the “C(2)” Front Yard Parking Variance.** As to the negative criteria of the “c(2)” front yard parking variance, provided that the conditions set forth below are imposed and complied with, the Board finds that the “c(2)” variance as to parking location can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the Board finds that there will be no substantial negative impacts to neighbors resulting from the deviation as to the parking location requirement and, in fact, there will be less of an impact on the neighbors if the parking is where proposed rather than in a more complying location. Second, the Board notes and finds that there is ample

screening along Morristown Road / Route 202 to prevent any negative visual or other impacts relative to the location of the parked vehicles, which is the primary purpose of the ordinance requirement in the first instance. Third, as set forth above, allowing parking on the existing driveway in the front yard will result in less impervious coverage than extending the driveway to provide for a more ordinance compliance parking location.

4. **Board's Findings as to Conditional Use Approval.** The Board's findings and conclusions as to conditional use approval for the proposed use are as follows:

a. **Compliance with Ordinance Provisions.** With the exception of the requested "c" parking variance, and provided the conditions set forth below are imposed and complied with, the Board finds that the application will comply with all conditional use standards applicable to an accessory apartment and all applicable zoning ordinance regulations governing bulk. The Board further notes that it has given due consideration to the following and finds that all of these items have been satisfactorily addressed: preservation of existing natural resources on the site, safe and efficient vehicular and pedestrian circulation, parking and loading, screening, landscaping and locations of structures and exterior lighting and conformance with surrounding buildings and developments and to such development as is permitted by right within the zone.

b. **Compliance with Matters Vital to Public Health.** Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that matters vital to the public health (potable water, adequate sewerage, stormwater drainage, and traffic) have been adequately provided for and appropriately designed as part of the proposed use.

B. CONCLUSIONS OF LAW

1. **Conclusions as to the "C(2)" Front Yard Parking Variance.** The Board's conclusions as to the "c(2)" variance from the parking location regulations are as follows.

a. **Standards for Considering the "C(2)" Variance.** The Board has the power to grant "c(2)" or so-called "benefits v. detriments" variances pursuant to N.J.S.A. 40:55D-70c(2) where, in an application or appeal relating to a specific piece of property, the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements, and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment. This is the so-called "positive" criteria of a "c(2)" variance. The zoning benefits resulting from permitting the deviation(s) must be public benefits ("improved zoning and planning that will benefit the community") and not merely benefits for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1, 9 (App. Div. 1996). Finally, while "c(1)" hardship variances are not available for self-created situations and/or for mistakes, an

intentionally created situation or mistake does not serve to bar a “c(2)” variance because the focus of a “c(2)” variance is not on hardship but, rather, on advancing the purposes of zoning. Ketcherick v. Mountain Lakes Board of Adj., 256 N.J. Super. 647, 656-657 (App. Div. 1992); Green Meadows v. Montville Planning Board, 329 N.J. Super. 12, 22 (App. Div. 2000). Even if an applicant proves the “positive” criteria of a “c(2)” variance, the Board may not exercise its power to grant the variance unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70, “no variance or other relief ... may be granted ... unless such variance or other relief ... can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means the Town “master plan.” Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Conclusions as to Grant of the “C(2)” Variance.** As set forth in the factual findings above, the Board found that the grant of “c(2)” variance to allow for the deviation as to locating the parking in the front yard would advance the purposes of the MLUL provided that the conditions set forth below are imposed and complied with. The Board further found that the benefits of the deviation would substantially outweigh any detriments provided, again, that the conditions set forth below are imposed and complied with. The Board also found that the deviation resulted in benefits to the community, and not solely for the benefit of the applicants. Finally, provided that the conditions set forth below are imposed and complied with, the Board found that the grant of the “c(2)” variance would not result in substantial detriment to the public good or substantial impairment of the intent or purpose of the master plan or zoning ordinance. As such, the Board concludes that it can and should grant the “c(2)” variance at issue subject to the conditions set forth below.

2. **Conclusions as to Conditional Use Approval.** The Board’s conclusions as to the request for conditional use approval are as follows.

a. **Standards for Conditional Use Review and Approval.** As defined in the MLUL in N.J.S.A. 40:55D-3, a conditional use is “a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards of the location and operation of such as contained in the zoning ordinance” As held by our Supreme Court in Coventry Square, Inc. v. Westwood Zoning Board of Adj., 138 N.J. 285,287 (1994), “a conditional use is neither prohibited throughout the zone nor permitted at every location in the zone; rather, it is permitted at those locations in the zone where the use meets the conditions set forth in the zoning ordinance.” As the Coventry Square Court explained, in the case of conditional uses, the “municipality has determined that the use is allowable in the zoning district but has imposed conditions that must be satisfied.” *Id.* at 297. Where a site plan for a conditionally permitted use complies with all of the conditional use conditions and standards that apply to the conditionally permitted use, the application is within the exclusive subject matter jurisdiction of the Planning Board pursuant to N.J.S.A. 40:55D-67a. Where the site plan for a conditionally permitted use deviates from one or more of the conditional use conditions and/or standards, the application is within the exclusive subject matter jurisdiction of the Board of Adjustment which may grant or deny a variance or variances to allow or prohibit a deviation of deviations pursuant to N.J.S.A. 40:55D-70d(3). If the Board of Adjustment denies a “d(3)” variance or “d(3)” variances, the conditionally permitted use is

prohibited on the property. The standards that the Planning Board must consider in deciding whether or not to grant conditional use approval are as follows: N.J.S.A. 40:55D-67a provides that conditional use approval shall be granted by the Board if the applicant meets the “definite specifications and standards” which have been set forth with certainty and definiteness in the applicable ordinance provisions. The Board must thus determine whether the proposed conditionally permitted use complies with all conditional use requirements set forth in the ordinance. As such, if the application complies with all ordinance regulations and requirements, the Board must grant conditional use approval. Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. CBS Outdoor, Inc. v. Lebanon Planning Board / Board of Adjustment, 414 N.J. Super. 563, 582 (App. Div. 2010). Unlike a site plan or subdivision application where the Board can under certain circumstances grant an approval conditioned on changes to comply with ordinance requirements, if a conditional use application does not comply with all conditional use ordinance standards, a condition cannot be imposed providing for subsequent compliance. As the court explained in CBS Outdoor, Inc., 414 N.J. Super. at 582, a “promise from an applicant about its future potential compliance with a conditional use standard or specification is not permitted” under either the MLUL or case law. If the application does not comply with all conditional use ordinance standards, the Board must deny conditional use approval. Id.

b. **Conclusions as to the Grant of Conditional Use Approval.** As set forth above in the factual findings, except for the requested “c” parking variance, the Board found that the application will comply with all applicable zoning ordinance regulations and all applicable site plan ordinance requirements. The Board further concludes that conditional use approval of the proposed improvements and use can and should be granted, subject to the conditions set forth below being imposed and complied with.

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON SEPTEMBER 21, 2021, THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE CONDITIONS SET FORTH BELOW:

C. RELIEF GRANTED

1. **Grant of “C(2)” Front Yard Parking Variance.** Subject to the conditions set forth below being imposed and complied with, the Board hereby grants a “c(2)” variance from ordinance section 21-22.1.b.2(a), which provides that no more than one required parking space for single-family detached dwelling units on lots of 30,000 square feet or more in area shall be located in a front yard, to allow all parking to be located in the front yard, to allow all parking required for the dwelling and the accessory apartment to be in the existing driveway, which is located in the front yard.

2. **Grant of Conditional Use Approval.** Subject to the conditions set forth below being imposed and complied with, the Board hereby grants conditional use approval to allow the use and occupancy of the accessory apartment in the dwelling.

D. CONDITIONS

1. **Revisions to the Plans.** Revisions to the plans shall be made by notes and/or drawings to the satisfaction of the Township Planner by June 7, 2022 (which is within six (6) months of the adoption of the within resolution on December 7, 2021) to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and/or as discussed by the Board on the record during the hearing on the application provided below. In the event that the applicant fails to make the revisions as

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.

a. **Following comments emanating from the memo to the Board from David Schley, PP, AICP (Township planner) dated September 16, 2021:**

(All comments intentionally omitted unless set forth herein.)

(4) The Square Footage Table on Drawing A-101 shall be revised to consistently reflect the proposed 85 square foot reduction in floor area. As presently shown in the "Proposed" column, the 85 square foot reduction is reflected in the floor area specified for the apartment (665sf), however, it appears that the 85 square foot reduction is not reflected in the floor areas specified for the basement/lower level (should be 1,939sf, not 2,024sf) and the total (should be 3,072sf, not 3,157sf).

2. **Limitation on Use of Apartment.** The apartment in the dwelling shall be limited to use as an accessory apartment, which shall be limited to not more than 25% of the floor area of the dwelling. There shall be no other and/or additional apartments on the property.

3. **Limitation on Occupancy of Accessory Apartment.** The occupancy of the accessory apartment shall be limited to the applicant's mother or some other person who is related (by blood or marriage) to the principal occupant of the dwelling. At such time as the accessory apartment becomes unoccupied, or at such time as the occupant of the accessory apartment does not, or no longer, bears the requisite relationship (by blood or marriage) to a principal occupant of the dwelling, the within conditional use approval shall terminate. (The "c" front yard parking variance shall remain in full force and effect.) In the event that ownership of the premises changes, there shall be a rebuttable presumption that such requisite relationship no longer exists.

4. **Certification as to Compliance with Conditions.** The applicants shall certify annually, on a form provided by the Zoning Official, that the conditions for the conditional use are still being satisfied.

5. **Exterior Lighting.** In accordance with the applicant's testimony given during the hearing, is the existing exterior light on the entrance to the accessory apartment shall be in a downward facing direction to avoid any light spillage onto neighboring properties. No additional exterior lighting shall be installed without prior review and approval by the Zoning Officer.

6. **No Garage Construction Without Review and Approval of the Board.** The lower-level floor plan on Drawing A-101 shows a future two-car garage on the northwest (Morristown Road) side of the dwelling. The within approvals have not and do not approve the construction of the garage. This future garage addition appears to require a variance from the minimum 50-foot front yard setback requirement. As such, there shall be no garage construction without a zoning permit being issued by the Zoning Officer certifying that no variance is needed

or, if variance(s) are needed, there shall be no garage construction without prior Board review and approval.

7. **Submission of Digital Plans.** The applicants shall submit digital copies of all plans in formats acceptable to the Township Engineering Department.

8. **Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy.** The applicants shall apply for and obtain a construction permit by December 7, 2023, which is within two years of the adoption of the Board's resolution on December 7, 2021. If during said two-year period, or extension thereof as granted by the Board, the applicants fail to obtain a construction permit, the approval shall automatically expire and become null and void. The applicants 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.

9. **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 a resolution, within 10 days of written notice that a deficiency exists in the escrow account, prior to signing the site plans, prior to the issuance of any permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition after receiving written notice and a 5-day period in which to cure the deficiency shall result in the relief granted terminating and becoming null and void. All written notices shall be sent to the applicants directly.

10. **Specific Approvals and Permits.** The within approval shall be conditioned upon the applicants obtaining permits and/or approvals 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. Township Board of Health;
- b. Somerset County Department of Health;
- c. Bernards Township Sewerage Authority;
- d. Somerset - Union Soil Conservation District certification / approval;
- e. Somerset County Planning Board unconditional approval, and
- f. NJDEP approval of any aspect of the proposed development within its jurisdiction.

11. **Subject to Other Approvals and Laws.** The within approval and the use of the property remains subject to all conditions of prior Board approvals not eliminated or modified by the within approval. The within approval and the use of the property are also conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of the property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

VOTE ON MOTION DULY MADE AND SECONDED ON SEPTEMBER 21, 2021:

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

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on December 7, 2021 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
PIEDICI	X			
MASTRANGELO	X			
MCNALLY	X			
CRANE	X			
DAMURJIAN	X			
BAUMANN	X			
EORIO	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 December 7, 2021.


CYNDI KIEFER, Board Secretary