

TOWNSHIP OF BERNARDS

PLANNING BOARD

MINUTES ^{v2}

REGULAR SESSION

September 20, 2022

Chairwoman Piedici called the meeting to order at 7:34 PM.

FLAG SALUTE

Chairwoman Piedici read the following open meeting and procedural statements:

OPEN MEETING STATEMENT

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this meeting of the Planning Board of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, NJ, was mailed to the Bernardsville News, Whippany, and to the Courier News, Bridgewater on January 19, 2022 and was mailed to all those people who have requested individual notice and paid the required fee."

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

ROLL CALL

Members Present: Baumann, Crane*, Damurjian, Eorio, Ladyzinski, McNally, Mallach, Mastrangelo, Piedici, Seville

Members Absent: Manduke

Also Present: Board Attorney, Jonathan E. Drill, Esq.; Board Planner, David Banisch, PP, AICP; Township Planner, David Schley, PP, AICP; Board Secretary, Cyndi Kiefer

*Via telephone

Moved by Ms. Mastrangelo, seconded by Mr. Seville, all eligible in favor and carried, the absence of Ms. Manduke excused.

APPROVAL OF MINUTES

August 16, 2022 – Regular & Executive Sessions – Approval was deferred to the 10/04/2022 meeting.

APPROVAL OF RESOLUTIONS

Fellowship Senior Living Inc.; Block 9301 Lot 33; 33 Allen Road; PB13-006A (approved) – Moved by Mr. Seville and seconded by Mr. Baumann that the resolution be approved as drafted.

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

Motion carried.

United States Golf Association; Block 9601, Lot 5.01; 77 Liberty Corner Road; PB22-003 (approved) – Moved by Ms. Mastrangelo and seconded by Mr. Damurjian that the resolution be approved as drafted.

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

Motion carried.

RESOLUTION #22-06 – Award of Change Order #1 – 2021 Professional Services Contract for Planning Board Planner – Chairwoman Piedici read the resolution into the record in its entirety. Ms. Mastrangelo moved to approve the resolution as drafted. Mr. Seville seconded.

Roll call: Aye: Baumann, Damurjian, Crane, Eorio, McNally, Mallach, Mastrangelo, Piedici, Seville
Nay: NONE
Ineligible: Ladyzinski
Motion carried.

RESOLUTION #22-07 – Award of Change Order #1 – 2022 Professional Services Contract for Planning Board Planner – Chairwoman Piedici read the resolution into the record in its entirety. Ms. Mastrangelo moved to approve the resolution as drafted. Mr. Damurjian seconded.

Roll call: Aye: Baumann, Crane, Damurjian, Eorio, McNally, Mallach, Mastrangelo, Piedici, Seville
Nay: NONE
Ineligible: Ladyzinski
Motion carried.

MASTER PLAN CONSISTENCY REVIEW – (of those elements previously updated by the Board to this point) Chairwoman Piedici stated that the Board was approximately three-quarters through its review and updating of the Master Plan, adding that this consistency review process would be conducted once again at the end of this process. The elements and maps listed below were reviewed as one document by the Board to determine whether the language and intent are clear and consistent throughout.

- Chapter I - Goals and Objectives
- Chapter III - Demographic and Housing Summary
- Chapter V - Circulation Plan Element
- Chapter VI - Community Facilities Plan Element
- Chapter VIII - Conservation and Open Space Plan Element
- Chapter IX - Utility Services Plan Element
- Chapter XIII - Green Buildings & Environmental Sustainability Plan
- Circulation Plan map set
- Community Facilities Plan
- Conservation Plan map set
- Open Space & Recreation
- Utility Services map set

A straw poll of the Board indicated that they were satisfied with the document.

Chairwoman Piedici advised the Board that at the 10/18/2022 meeting, Chapter VII – Parks and Recreation Plan Element is scheduled for review.

COMMENTS FROM MEMBERS OR STAFF – NONE

ADJOURN

On motion made by Ms. Mastrangelo, seconded by Deputy Mayor McNally, all in favor and carried, the meeting was adjourned at 7:59 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Planning Board

Approved as drafted 10/04/2022

09/26/2022 dskpjd

BERNARDS TOWNSHIP PLANNING BOARD

FELLOWSHIP SENIOR LIVING, INC.

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

APPLICATION #PB13-006A

RESOLUTION MEMORIALIZING THE ELIMINATION AND MODIFICATION OF CONDITIONS OF PRIOR APPROVALS TO ALLOW USE OF THE FELLOWSHIP SENIOR LIVING THEATER/MULTI-PURPOSE ROOM WITHOUT LIMITATIONS AS TO THE NUMBER OF PRODUCTIONS AND PERFORMANCES PER YEAR, THE TYPE OF PERFORMANCES AND PRODUCTIONS THAT ARE ALLOWED TO BE CONDUCTED, AND THE TIMEFRAMES IN WHICH PERFORMANCES MAY BE CONDUCTED, EXCEPT THAT NO MULTI-PURPOSE ROOM USE AND THEATER PERFORMANCES/PRODUCTIONS MAY BE CONDUCTED ON WEEKDAYS BETWEEN THE HOURS OF 4:00 TO 7:00 P.M.

WHEREAS, Fellowship Senior Living, Inc. (the “**applicant**”), now known as Fellowship Village Inc., 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**”);

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**”);

WHEREAS, the applicant applied for and obtained from the Bernards Township Planning Board (the “**Board**”) certain approvals (the “**prior approvals**”) including preliminary and final major site plan approval, conditional use approval, exceptions from certain site plan ordinance requirements, and modification of certain conditions of a prior approval resolution to expand Fellowship Village, specifically to: (1) expand the community center by 27,100 square feet (the “community center improvements”), including construction of a one-story, 240 seat maximum capacity multipurpose room / theatre (the “multi-purpose room / theatre”), (2) expand the health center by 55,695 square feet, plus additions of porte-cocheres and open porches (the “health center improvements”), (3) reconfigure and expand the parking areas that serve the community center and the health center, including vehicle circulation improvements at the two buildings’ main entrances, new grass paver parking spaces in the “oval” area currently consisting of existing lawn area in front of the community center, and additional parking spaces in other areas of the property (the “parking improvements”), and (4) addition of two underground stormwater detention systems and modifications to the stormwater retention basin located south of the health center (the “stormwater management improvements”) (all improvements together referred to as the

“**expanded development**”) as memorialized in a resolution adopted by the Board on October 18, 2016 (the “**2016 Resolution**”);

WHEREAS, the 2016 Resolution was subject to a number of conditions, including Conditions #6, 10 and 22, which provide in relevant part as follows:

6. **No Weekday Public Paid Performances in Multi-Purpose Room / Theater Prior to 7:00 pm.** There shall be no weekday (Monday through Friday) public paid performances in the multi-purpose room / theater before 7:00 p.m. [This condition was intended to keep performances out of “peak hour” traffic times and was superseded by paragraph 6 of the Parking Management Program as provided in condition #22 below].

10. **Use of Multi-Purpose Room / Theater Limited to Trilogy, Light Opera, and Other Professional Organizations and to the Number of Productions set forth in Exhibit A-6.** Use of the multi-purpose room / theater shall be limited to Trilogy, Light Opera, and other professional organizations and to the number of productions as set forth in Exhibit A-6, a copy of which is attached hereto and incorporated by reference herein.

22. **Parking Management Program dated February 16, 2016.** The applicant shall implement and abide by the Parking Management Program dated February 16, 2016, a copy of which is attached hereto and incorporated by reference herein. Specifically, Paragraph 6 of the Parking Management Program states that for ticketed Theater events that are open to the general public, doors shall open for attendee admission no earlier than 7:00 P.M;

WHEREAS, the applicant applied to the Board by letter from its attorney dated March 29, 2022 seeking to eliminate or modify Conditions #6, #10 and #22 of the 2016 Resolution to permit the use of the theater/multi-purpose room before 7 P.M. on weekdays and to allow programming on days and times without limitation by the Planning Board (the “**application**”);

WHEREAS, the Board has exclusive procedural and subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:55D-12a and in accordance with Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982);

WHEREAS, the Board considered the application at a duly noticed public hearing on June 7, 2022, during which hearing the applicant was represented by Jennifer Phillips Smith, Esq. (of Gibbons P.C.), and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

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

1. Scott Hart (manager of the Fellowship Cultural Arts Center/The Sieminski Theater at Fellowship Village), and

2. Gary W. Dean, PE (applicant’s traffic engineering expert); and

WHEREAS, no exhibits were submitted into evidence during the hearing and no interested parties or other members of the public testified or otherwise presented evidence during the hearing;

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

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. **The Modification/Elimination Application.** As set forth above, the application seeks the elimination or modification of Conditions #6, #10 and #22 of the Board's 2016 Resolution, which provide in relevant part as follows:

6. **No Weekday Public Paid Performances in Multi-Purpose Room / Theater Prior to 7:00 pm.** There shall be no weekday (Monday through Friday) public paid performances in the multi-purpose room / theater before 7:00 p.m. [This condition was intended to keep performances out of "peak hour" traffic times and was superseded by paragraph 6 of the Parking Management Program as provided condition #22 below];

10. **Use of Multi-Purpose Room / Theater Limited to Trilogy, Light Opera, and Other Professional Organizations and to the Number of Productions set forth in Exhibit A-6.** Use of the multi-purpose room / theater shall be limited to Trilogy, Light Opera, and other professional organizations and to the number of productions as set forth in Exhibit A-6, a copy of which is attached hereto and incorporated by reference herein;

22. **Parking Management Program dated February 16, 2016.** The applicant shall implement and abide by the Parking Management Program dated February 16, 2016, a copy of which is attached hereto and incorporated by reference herein. Specifically, Paragraph 6 of the Parking Management Program states that for ticketed Theater events that are open to the general public, doors shall open for attendee admission no earlier than 7:00 P.M.

2. **Standards for Considering the Request for Elimination or Modification of Conditions of Approvals.** Our courts have held that a land use board has the power to modify or eliminate prior approval conditions upon a "proper showing of changed circumstances," or upon "other good cause" warranting modification or amendment, or if "enforcement of the restrictions would frustrate an appropriate purpose." Cohen v. Fair Lawn, 85 N.J. Super. 234, 237 (App. Div. 1964); Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), certif. denied 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990). N.J.S.A. 40:55D-12a recognizes the authority of a board to modify or

eliminate previously imposed conditions by requiring that public notice be given “for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice.” The court in Cohen 85 N.J. Super. at 237-238, noted that even if a condition is agreed to by an applicant, it can be later eliminated if its elimination will not have an adverse effect on public health or safety, and this is especially so where the underlying use serves the general welfare. As to the “good cause” grounds, our courts have held that a board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or eliminate the condition is consistent with or contrary to that intent. Sherman 242 N.J. Super. at 430. In this regard, our courts have held that a board is not limited to the four corners of the resolution to determine intent and can consider Board minutes of the underlying hearing, transcripts if available, or expert reports filed with the application. The object is to determine how significant the condition was, meaning whether the underlying approval would not have been granted without the imposition of the condition, or whether the condition was imposed for general welfare purposes only, meaning to advance the general welfare but not critical for the survival of the underlying approval. Finally, our courts have held that elimination of modification of a condition imposed by a land use board should generally be heard by the board that imposed the condition. Amato v. Randolph Planning Board, 188 N.J. Super. 439, 447 (App. Div. 1982)

3. **Testimony Presented by the Applicant.** The applicant presented testimony from the following two witnesses in support of its request to eliminate or modify the conditions at issue:

a. Scott Hart, the manager of the Fellowship Cultural Arts Center/The Sieminski Theater at Fellowship Village, testified as to the theater’s current schedule, which is limited to twelve productions per year. Mr. Hart explained that, at present and because of the aforementioned conditions, the theater cannot be used for public performances during approximately 80% of any given month. He further explained that this lack of availability has caused the theater to have to refuse national touring productions that had availability between other engagements in the New York/New Jersey area and were willing to appear for 1 or 2 nights between other stops on their tours. In response to questions regarding parking during sold-out or near sold-out performances, Mr. Hart explained the established protocol which is when ticket sales have almost sold out for a production, the theater staff arranges for a parking attendant to direct visitors to available parking spaces. Finally, Mr. Hart testified that since he started working there, he has seen the overflow grass parking area used no more than three times and he has never seen it close to full.

b. Gary W. Dean, PE, the applicant’s traffic engineering expert who provided the traffic engineering testimony to the Board for the prior approvals during 2014-2016, testified regarding his preparation of a post-construction analysis of the existing parking demands at the site as related to recent theater performances at Fellowship Village, one of which was nearly at maximum capacity. Mr. Dean submitted the analysis in a report titled “Parking Evaluation Report” prepared by Dolan & Dean Consulting Engineers, dated March 14, 2022 (the “**Dean Report**”). To assess the parking demand associated with the theater performances, Mr. Dean (through his traffic engineering consulting firm) conducted on-site parking demand counts during two performances: Saturday, December 18, 2021 and Saturday, January 1, 2022. He also reviewed ticket sales information for the performances on those dates. During performances, the “Oval” is utilized by guest/attendee parking and, thus, the “Oval” was the primary focus of the parking study.

The southerly parking lot is used by the cast and crew. Therefore, the tickets sales directly correlate to the parking occupancy at the “Oval,” as cast and crew members do not require tickets and would be a generally consistent demand, irrespective of actual attendance figures. The parking demand survey area consisted of the southerly parking lot and the parking lot along the middle of the site known as the “Oval”. The “Oval” contains both permanent, paved spaces, as well as grass-paver spaces in the middle (interior) of the Oval for overflow parking. The “Oval” (Lot 1) provides 121 total parking stalls, including 54 grass paver parking stalls. The southerly lot (Lot 2) provides 197 parking stalls, for an overall total of 318 parking stalls in the middle of the campus. The remaining site parking spaces are located along the various courts and “residential” streets and while available for public parking, are not of material concern to this Evaluation. For the Saturday, December 18, 2021 performance, 117 tickets were sold and there were 125 parked vehicles out of a total of 318 available spaces (193 vacant parking stalls) during the Peak Period (7:30 p.m. to 7:45 p.m.). For the Saturday, January 1, 2022 performance, 229 tickets were sold and there were 140 parked vehicles out of a total of 318 available spaces (178 vacant parking stalls) during the Peak Period (2:00 p.m. to 2:15 p.m.). For the Saturday, December 18, 2021 performance, 117 tickets were sold and there were 38 parked vehicles in the Oval out of a total of 121 available spaces. Therefore, 31% of available parking spaces were occupied. The Average Vehicle Occupancy rate (attendees per vehicle) was 3.08. For the Saturday, January 1, 2022 performance, 229 tickets were sold and there were 66 parked vehicles in the Oval out of a total of 121 available spaces. Therefore, 55% of available parking spaces were occupied. The Average Vehicle Occupancy rate (attendees per vehicle) was 3.47. The “Oval” experienced a demand occupancy that ranged 30% to 55% during performances. For the January 1, 2022 performance, the ticket sales were 89% of maximum theater capacity. As the parking was only at 55% of capacity in the Oval, even at adjusted full theater capacity, Mr. Dean opined there would be abundant surplus parking on the Oval. The number of tickets sold and number of parked vehicles translate to a composite average vehicle occupancy (the number of attendees arriving in the same vehicle) of 3.28. This occupancy rate was then used to calculate the maximum anticipated parking demand at full capacity. With a maximum theater capacity, this vehicle occupancy rate equates to approximately 79 parked vehicles. Finally, as an alternate conservative calculation, if the lower occupancy rate of 3.08 passengers per vehicle was used (based on the December 18, 2021 performance), then the maximum parking demand at full theater capacity would be 84 parking spaces. With 121 spaces available at the “Oval,” the theater can host more frequent performances at maximum capacity with a surplus of at least 42 parking stalls (more than one third) at all times. In summary, Mr. Dean testified that the site parking provides more spaces than are needed at full theater capacity. Therefore, based on observed, measured parking activity at the site and the analysis derived therefrom, Mr. Dean concluded that more than sufficient parking is provided at Fellowship Village to accommodate unrestricted theater events at maximum capacity without creating a negative impact on the property or surrounding area.

4. **Board’s Findings and Conclusions as to Good Cause Existing for Modification of Condition #6, #10 & #22 of the 2016 Resolution.** Turning to the issue of whether or not to modify or eliminate Conditions #6, #10 and #22, the Board finds that good cause exists to modify these conditions subject to the conditions set forth below for the following reasons. First, the Board notes and finds that it imposed these conditions on the prior approvals to restrict the use of the Theater/Multi-purpose room based on acknowledged traffic concerns at the time of the prior approvals, as set forth in the 2016 Resolution. Second, the Board finds on the basis of observed, measured parking activity at the site and the analysis detailed in the Dean Report, as well as the

testimony of Mr. Dean during the hearing, that more than sufficient parking is provided at Fellowship Village to accommodate theater events at maximum capacity without creating a negative impact on the property or surrounding area, provided, however, that there are no performances or productions to be allowed on weekdays between the “peak hours” of 4-7 P.M. E.S.T. Third, the Board concludes, based on the aforementioned findings, that the conditions at issue can be modified as set forth below and remain consistent with the Board’s intent behind imposing the conditions in the first instance. Finally, the Board specifically finds that no negative impacts will result from modifying the conditions at issue because, other than weekdays between the hours of 4-7 P.M. (which will be subject to a condition as set forth below), the parking usage associated with public theater events will not result in negatively impacting parking on the site. For all of the foregoing reasons, the Board finds and concludes that good cause exists to warrant the modification of the conditions as set forth below, subject to the conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE BERNARDS TOWNSHIP PLANNING BOARD, BY MOTION DULY MADE AND SECONDED ON JUNE 7, 2022, AS FOLLOWS:

B. RELIEF

1. **Modification of Conditions #6, #10 & #22 of the 2016 Resolution.** Subject to the conditions set forth below, conditions #6, #10 and #22 of the 2016 Resolution are hereby modified so that the Applicant can use the theater/multi-purpose room without any limitations as to the number of productions and performances per year or the type of performances and productions that are allowed to be conducted but with the limitation of no performances or productions on weekdays between the “peak hours” of 4-7 P.M remaining applicable to the use of the theater/multi-purpose room.

C. CONDITIONS

1. **Modification of Condition #6 of the 2016 Resolution.** The relevant portion of condition # 6, superseded by paragraph 6 of the Parking Management Program referenced in Condition #22 of the Resolution, is hereby modified to provide as follows: “There shall be no ticketed theater events that are open to the public on weekdays between the ‘peak hours’ of 4-7 P.M.”

2. **Modification of Condition #10 of the 2016 Resolution.** Section I of Exhibit A-6 referenced in condition #10 of the 2016 Resolution is hereby modified to delete all provisions, except for the provision that states: “For every production, residents will have a period of 7 days prior to tickets being offered to non-residents, to purchase tickets at a senior discount.” Section II of Exhibit A-6 shall not be modified.

3. **Modification of Condition #22 of the 2016 Resolution.** Paragraph 6 of the Parking Management Program, which is referenced in Condition #22, is hereby modified to state: “There shall be no ticketed theater events that are open to the public on weekdays between the “peak hours” of 4-7 P.M.” For these events, cast, production crew and musicians shall be directed to park in the Health Center parking lot. Signage shall indicate theater entrance through the lower employee entrance, directly to the theater.

4. **Subject to Conditions of Prior Approvals and Other Approvals and Laws.** The within approval and the use of the property remain subject to all conditions of the prior approvals not specifically eliminated or modified in the within resolution. 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 JUNE 7, 2022:

THOSE IN FAVOR: BAUMANN¹, MALLACH, MANDUKE, MASTRANGELO, SEVILLE, EORIO, & PIEDICI

THOSE OPPOSED: DAMURJIAN.

The above memorializing resolution was adopted on September 20, 2022 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
BAUMANN	X			
MALLACH	X			
MANDUKE				X
MASTRANGELO	X			
SEVILLE	X			
EORIO	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

¹As reflected in the record, Board Member Baumann's name appeared on a certified mailing list for the public hearing based on property that he used to own, but did not own at the time of the hearing. Accordingly, Board Member Baumann was qualified to sit during the consideration of the application and had no conflict of interest and no appearance of a conflict in doing so.

memorializing resolution duly adopted by the
said Planning Board on September 20, 2022.

Cyndi Kiefer

CYNDI KIEFER, Board Secretary

BERNARDS TOWNSHIP PLANNING BOARD

**UNITED STATES GOLF ASSOCIATION
BLOCK 9601, LOT 5.01**

APPLICATION #PB22-003

**RESOLUTION MEMORIALIZING AMENDED PRELIMINARY AND FINAL SITE
PLAN APPROVAL AND “C(2)” VARIANCE TO ALLOW THE RECONFIGURATION
OF THE PARKING LAYOUT AND RELATED SITE IMPROVEMENTS**

WHEREAS, United States Golf Association (the “**applicant**” or “**USGA**”) owns certain property located in the Township of Bernards (the “**Township**”) designated on the Township tax maps as Block 9601, Lot 5.01 (the “**property**”), which property is situated in the GH Golf Heritage zoning district (the “**GH zone**”) and contains the headquarters of the USGA, which includes a golf museum in an approximately 33,000 square foot two-and-a-half-story brick building, the USGA administrative offices in an approximately 104,000 square foot four-story brick building, an equipment testing facility in an approximately 18,000 square foot three-story brick building, a maintenance facility in an approximately 5,000 square foot one-story building, and a main drive, a service drive, and a series of parking lots and other associated improvements (all buildings and site improvements together are referred to as the “**USGA facility**”);

WHEREAS, USGA applied for and obtained from the Bernards Township Planning Board (the “**Board**”) preliminary and final site plan approval and “c(1)” and “c(2)” variances in 2016 (the “**2016 Approvals**”), as memorialized in a resolution dated April 4, 2017, to allow: (a) construction of an approximately 9,431 square foot building addition to the administration building, (b) reconstruction/expansion of existing parking areas resulting in 53 additional parking spaces, (c) replacement of the existing double-sided freestanding identification sign, (d) construction of stormwater management improvements, including two infiltration/bio-retention basins and a drywell system, and (e) construction of associated site improvements, including landscaping (the “**development**”);

WHEREAS, USGA subsequently applied for and obtained from the Board amended preliminary and final site plan approval and “c(1)” and “c(2)” variances in 2017 (the “**2017 Approvals**”), as memorialized in a resolution dated June 6, 2017 (the “**2017 Resolution**”), to allow: (a) reconfiguration of the walkways, patios and landscaping within the courtyard areas and around the administrative building, and (b) installation of the parking spaces in two phases, whereby Phase 1 would include the restriping of a portion of the existing parking areas to satisfy access requirements for fire lanes and construction of 48 temporary parking spaces (the “**temporary parking spaces**”) that would increase the total parking supply from 298 to 320 spaces, and Phase 2 would include the removal of the temporary parking spaces and construction of the proposed permanent parking spaces (the “**permanent parking spaces**”) to provide a total parking supply of 351 spaces in predominantly the same layout as approved in the 2016 Approvals (the “**amended development**”) (the 2016 Approvals and the 2017 Approvals are together referred to as the “**Prior Approvals**”);

WHEREAS, the 2017 Resolution was subject to a number of conditions, including Condition #9, which provides as follows:

“Time to Commence Construction or Submit an Application for Modified Parking Layout Approval. The applicant shall either commence construction of the permanent parking spaces consistent with the 2016 Approval or submit an application to the Board for a modified parking layout by June 6, 2019 (which is within two years of the date of the adoption of the within resolution on June 6, 2017). During that two-year time period, the applicant shall be permitted to obtain a certificate of occupancy for the administrative office building, which is presently scheduled to be fully constructed by early 2018”;

WHEREAS, the applicant obtained from the Board a modification to Condition #9 of the 2017 Resolution extending the time period within which the applicant can either commence construction of the permanent parking spaces or submit a modified parking layout from June 6, 2019 to June 6, 2021, extending the final site plan protection period provided by N.J.S.A. 40:55D-52 for two (2) one-year periods, from June 6, 2019 to June 6, 2021, and extending the expiration date of the “c” variances granted in connection with the amended Approvals from June 6, 2019 to June 6, 2021;

WHEREAS, the applicant obtained from the Board a second modification to Condition #9 of the 2017 Resolution extending the time period within which the applicant can either commence construction of the permanent parking spaces or submit a modified parking layout from June 6, 2021 to June 6, 2022, extending the final site plan protection period provided by N.J.S.A. 40:55D-52 for one year, from June 6, 2021 to June 6, 2022, and extending the expiration date of the “c” variances granted in connection with the amended Approvals from June 6, 2021 to June 6, 2022;

WHEREAS, USGA submitted an application on June 3, 2022 to the Board seeking amended preliminary and final site plan and “c(2)” variance approval (the “**application**”) to reconfigure the parking layout to provide a total of 324 parking spaces, a reduction of 27 parking spaces, which continues to meet the ordinance requirement of 274 parking spaces, reconfigure the access driveway in front of the existing museum and administrative/office building and to provide parking spaces proximate to the entrance of the administrative/office building, among other related site improvements (the “**proposed improvements**”);

WHEREAS, the USGA facility is a principal permitted use in the G-H zone so the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-46, -50 and -60a because no “d” variances are required to construct the proposed improvements in accordance with N.J.S.A. 40:55D-70d;

WHEREAS, the application was deemed to be complete;

WHEREAS, a number of documents were submitted pertaining to the application by the applicant, Board and Township experts and officials, and outside agencies, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought,

which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Amended Preliminary and Final Site Plans titled “USGA Campus Renovation” prepared by Robert C. Moschello, PE, of Gladstone Design, Inc., signed and dated June 3, 2022, consisting of 14 sheets (the “**Site Plans**”),
2. Project Report and Environmental Impact Assessment prepared by EcolSciences, Inc., dated June 3, 2022 (the “**EIS**”),
3. Stormwater Management Report prepared by Gladstone Design, Inc., dated June 1, 2016, last revised June 3, 2022 (the “**Stormwater Report**”), and
4. Operations and Management Manual for Stormwater Management Facilities, prepared by Gladstone Design, Inc., dated June 1, 2016, last revised June 3, 2022 (the “**O&M Manual**”);

WHEREAS, the Board considered the application at duly noticed public hearing on August 2, 2022, with an affidavit of publication and service of notice of the hearing 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 Thomas J. Malman, Esq. (of Day Pitney LLP), and the Board was represented by Joseph C. Tauriello, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

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

1. Robert Moschello, PE (applicant’s engineering expert),
2. Larry Plevier, PE, CME (Board’s engineering expert),
3. David Banisch, PP (Board’s planning expert), and
4. David Schley, PP (Township’s planner);

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

A-1 PowerPoint titled “USGA Headquarters Administration Building Renovation,” dated August 2, 2022, consisting of the following ten (10) sheets:

1. Cover Sheet,
2. Neighborhood Aerial Exhibit,
3. Aerial and Environmental Constraints Exhibit,
4. Overall Site Plan Rendering (Approved from 2017),
5. Interim Parking Plan Rendering (Approved from 2017),
6. Overall Site Plan Rendering,

7. Overall Site Plan Rendering – Current Application,
8. Site Plan Rendering “A”,
9. Site Plan Rendering “B”, and
10. Lighting Exhibit;

WHEREAS, AFTER CONSIDERING THE DOCUMENTS SUBMITTED BY THE APPLICANT FOR APPROVAL AS REFERENCED ABOVE, THE OTHER DOCUMENTS SUBMITTED INTO THE RECORD BY THE APPLICANT, THE BOARD AND TOWNSHIP EXPERTS AND OFFICIALS, AS WELL AS BY OUTSIDE AGENCIES, THE TESTIMONY OF THE WITNESSES REFERENCED ABOVE, AND THE EXHIBITS 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, Improvements and Prior Approvals and Parking Space Conditions.** The property is comprised of 68.537 acres, is located at 77 Liberty Corner Road, and is situated in the G-H Zone. The USGA facility exists on the property as a principally permitted use. As set forth above, the USGA facility consists of the golf museum building, the administrative building, the equipment testing building, the maintenance building and associated site improvements. The USGA facility was initially approved by the Bernards Township Board of Adjustment (the “**BTBOA**”) by way of a “d(1)” use variance and site plan approval in 1971. The property was situated in the R-1 residential zone since prior to the time of the initial use variance and site plan approval granted by the BTBOA in 1971 and was re-zoned to G-H zone by Ordinance #2302 adopted on January 27, 2015. Since January 27, 2015, the USGA facility has been a principal permitted use on the property. The Board granted the 2016 Approvals by a vote on August 16, 2016, as memorialized in a resolution adopted on April 4, 2017, consisting of preliminary and final site plan approval with “c” bulk variances to allow the applicant to: (a) construct an approximately 9,431 square foot building addition to the administration building, (b) install 77 parking spaces, (c) replace the existing double-sided freestanding identification sign, (d) construct stormwater management improvements, including two infiltration/bio-retention basins and a drywell system, and (e) construct associated site improvements, including landscaping. The Board subsequently granted the 2017 Approvals, consisting of amended preliminary and final site plan and bulk variance approval by a unanimous vote taken on May 16, 2017, as memorialized in the 2017 Resolution adopted on June 6, 2017. The 2017 Approvals permitted several modifications to the 2016 Approvals, including a two phased development plan for on-site parking facilities and imposed a condition (“**Condition #9**”) obligating the Applicant, by June 6, 2019 (the “**Parking Plan Date**”), to either construct the full buildout of the approved parking plan or submit an application to the Board for approval of an amended layout. Condition #9 specifically provides as follows:

The applicant shall either commence construction of the permanent parking spaces consistent with the 2016 Approval or submit an application to the Board for a modified parking layout by June 6, 2019 (which is within two years of the date of the adoption of the within resolution on June 6, 2017). During that two-year time period, the applicant shall be permitted to obtain a certificate of occupancy for the administrative office building, which is presently scheduled to be fully constructed by early 2018.

As set forth above, the Board granted the Applicant's request to extend the Parking Plan Date and the final site plan protection period to June 6, 2021 by resolution adopted on May 21, 2019, and subsequently granted a second extension of the Parking Plan Date to June 6, 2022 by resolution adopted on October 19, 2021.

2. **The Relief Requested and the Proposed Improvements.** As set forth above, the relief sought in the application is amended preliminary and final site plan approval, and "c(2)" variance, to allow the proposed improvements consisting of a modification of the Prior Approvals as follows: (a) reconfigure the parking layout to provide total of 324 parking spaces, a reduction of 27 parking spaces, which continues to meet the ordinance requirement of 274 parking spaces, (b) reconfigure the access driveway in front of the existing museum and administrative/office building, and (c) provide parking spaces proximate to the entrance of the administrative/office building, among other related site improvements, such as the construction of stormwater basins, lighting and landscaping. The proposed improvements will include the removal of the temporary parking spaces and construction of the permanent parking spaces in generally the same layout as approved in the 2016 Approvals. To allow construction of the proposed improvements, a "c" variance is required from zoning ordinance section 21-28.2.a to allow a portion of the proposed realigned driveway to be located and encroach within the required 50 foot buffer to adjoining Block 9601, Lot 8 to the south, which is currently owned by the applicant. The applicant has requested a "c(2)" or so-called "benefits v. burdens" variance.

3. **Findings as to the "C(2)" Variance to Allow the Realigned Driveway to Encroach into the 50-foot Buffer.** As set forth above, a "c(2)" variance has been requested from the requirement in zoning ordinance section 21-28.2.o to allow a buffer of less than 50 feet for the realigned driveway. The Board's findings as to the requested variance are as follows:

a. **Positive Criteria of the "C(2)" Variance to Allow the Realigned Driveway to Encroach into the 50-foot Buffer.** The applicant can relocate the driveway to comply with the 50-foot buffer requirement. As such, the Board finds that any "hardship" that could be said to exist is self-created so that a "c(1)" or so-called "hardship" variance would not be warranted in this application.¹ However, the proposed realignment of the driveway provides for a safer entrance to the property because the existing curve in the driveway will be eased and slightly straightened which the Board finds for the reasons that follow warrants the grant of a

¹ A "c(1)" variance is not available where hardship is self-created. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979).

“c(2)” variance.² The Board’s findings as to the “c(2)” variance are as follows. First, allowing an encroachment into the 50-foot buffer by the realigned driveway in order to improve vehicular safety and traffic circulation is a better zoning alternative for the property than insisting on strict compliance with the buffer requirement. In this regard, the Board specifically finds that granting a “c(2)” variance to allow the realigned driveway to encroach into the 50-foot buffer will advance the zoning purpose of encouraging municipal action to guide the appropriate use or development of land in a manner which will promote the general welfare and safety as enunciated in N.J.S.A. 40:55D-2a. Second, the Board finds that this zoning benefit is a community wide benefit and that allowing the buffer deviation is not merely a private benefit to the applicant. Finally, the Board finds that the zoning benefits resulting from granting the “c(2)” variance to allow the buffer deviation to promote a safer access drive substantially outweighs any resulting detriments if the conditions set forth below are imposed and complied with. As such, the Board finds that a “c(2)” variance is warranted subject to the conditions set forth below and, of course, subject to satisfaction of the negative criteria.

b. **Negative Criteria of the “C(2)” Variance to Allow the Realigned Driveway to Encroach into the 50-foot Buffer.** The Board finds that a “c(2)” variance to allow the realigned driveway to encroach into the 50-foot buffer can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance because the location of the realigned driveway will not inhibit the provision of adequate landscape screening along the adjoining property. To the contrary, the Board finds that the applicant is providing sufficient buffering and screening of the proposed realigned driveway from the neighboring lot. The applicant is proposing to plant landscaping along the south property line, which will include a mix of trees strategically located to blunt visibility of the driveway as viewed from the neighboring lot, which is owned by the applicant. Further, subject to the imposition of and compliance with the conditions set forth below, the Board finds that granting a “c(2)” variance to allow the encroachment into the 50-foot buffer will not substantially impair the intent and purpose of the master plan and zoning plan.

4. **Findings as to Amended Preliminary and Final Major Site Plan Review.** The Board’s findings as to amended preliminary and final site plan review are as follows:

a. **Compliance with Ordinance Provisions.** Other than the zoning ordinance regulation set forth above from which the applicant seeks a “c” variance, the Board finds that the application and Site Plans will comply with all other applicable zoning ordinance regulations and site plan ordinance requirements, provided however that the conditions set forth below are imposed and complied with.

² While a “c(1)” variance is not available for self-created hardship situations, a “c(2)” variance is available 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). However, a “c(2)” variance can be denied where it does not provide a benefit to the community and would “merely alleviate a hardship to the applicant which he himself created.” Wilson v. Brick Twp. Zoning Board, 405 N.J. Super. 189, 199 (App. Div. 2009).

b. **Compliance with Matters Vital to Public Health.** Provided that the conditions set forth below are imposed and complied with, the Board also finds that matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development. See, ordinance sections 21-54.8.a.1(c),(d), (e)&(f). Water supply and sewage disposal will not change under the proposed development. The Board's previous findings relating to all requirements applicable to stormwater management remain unchanged from the Prior Approvals. Ordinance section 21-39.3.a.3.(b) provides that "traffic circulation shall be designed to minimize the use of aisles serving parking areas." The Board finds that the traffic circulation as reflected on the Site Plans does, in fact, minimize the use of aisles serving parking areas for pedestrian circulation. The Board further finds that the Site Plans have been designed in such a manner to ensure safe pedestrian circulation and that internal circulation system will be able to safely handle the vehicular traffic generated by the proposed development. In this regard, the Board notes that ordinance section 21-22.1 provides that, "since a specific use may generate a parking demand different from those enumerated [in a chart in the ordinance], documentation and testimony shall be presented to the Board as to the anticipated parking demand." The number of parking spaces set forth in the ordinance as being the minimum necessary for the USGA facility is 274. The proposed development includes installation of 324 permanent parking spaces. On the basis of the testimony presented by the applicant during the hearing, the Board finds that the anticipated parking demand generated by the USGA facility after construction of the proposed development will not exceed 324 parking spaces.

B. CONCLUSIONS OF LAW

1. **Conclusions as to the "C(2)" Variance.** The Board's conclusions as to the "c(2)" variance 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. burdens" variances from zoning ordinance regulations 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." The zoning benefits resulting from permitting the deviation must be for the community ("improved zoning and planning that will benefit the community") and not merely for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The Appellate Division has held that 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). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Stary Dom v. Mauro, 216 N.J. 16, 32-33 (2013). While "c(1)" or so-called hardship variances are not available for self-created situations and/or for mistakes, our courts have held that an intentionally created situation or a mistake does not 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). Significantly, however, a “c(2)” variance can be denied where it does not provide a benefit to the community and would “merely alleviate a hardship to the applicant which he himself created.” Wilson v. Brick Twp. Zoning Board, 405 N.J. Super. 189, 199 (App. Div. 2009). Finally, the Board may not exercise its power to grant a “c(2)” variance otherwise warranted, however, 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 ... without a showing that 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.” As set forth above, the phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Conclusions as to Grant of “C(2)” Variance to Allow the Realigned Driveway to Encroach into the 50-foot Buffer.** As set forth above in the factual findings, the Board found that, because the applicant can relocate the realigned driveway to comply with the 50-foot buffer requirement, the Board could not find any hardship that would warrant a “c(1)” variance. As the Board also found, however, that the realigned driveway promotes traffic circulation and safety. The Board found that allowing the encroachment into the 50-foot buffer by the realigned driveway in order to promote traffic circulation and safety is a better zoning alternative for the property than insisting on strict compliance with the buffer requirement. The Board specifically found that granting a “c(2)” variance to allow the realigned driveway to encroach into the 50-foot buffer would advance the purpose of zoning of encouraging municipal action to guide the appropriate use or development of land in a manner which will promote the general welfare and safety as enunciated in N.J.S.A. 40:55D-2a. The Board also found that this zoning benefit is a community wide benefit and that allowing the buffer deviation is not merely a private benefit to the applicant. Finally, the Board found that the zoning benefits resulting from granting the “c(2)” variance to allow the buffer deviation to promote safety and traffic circulation substantially outweighs any resulting detriments if the conditions set forth below are imposed and complied with. As such, the Board found that a “c(2)” variance was warranted subject to the conditions set forth below and subject to satisfaction of the negative criteria. As to the negative criteria, the Board found that a “c(2)” variance to allow the realigned driveway to encroach into the 50-foot buffer can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance because the location of the realigned driveway will not inhibit the provision of adequate landscape screening along the adjoining property. To the contrary, the Board found that the applicant was providing sufficient buffering and screening of the proposed realigned driveway from the neighboring lot. Further, subject to the imposition of and compliance with the conditions set forth below, the Board found that granting a “c(2)” variance to allow the encroachment into the 50-foot buffer will not substantially impair the intent and purpose of the master plan and zoning plan. Based on all of the foregoing findings, the Board concludes that a “c(2)” variance to allow the realigned driveway to encroach into the 50-foot buffer can and should be granted, subject to the conditions set forth below being imposed and complied with.

2. **Amended Preliminary and Final Major Site Plan Review.** The Board’s conclusions as to amended preliminary and final major site plan review are as follows:

a. **Standards for Amended Preliminary and Final Site Plan Review.** N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of amended preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that if “any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing” is proposed, “an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development.” N.J.S.A. 40:55D-46b further provides that the Board “shall” grant amended 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 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 approval. Conversely, if the application does not comply with all ordinance provisions, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are exceptions:

(1) The first exception is where an application does not comply with all ordinance regulations and requirements but the Board grants relief in terms of variances or exceptions. In that case, 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 regulations and requirements.

(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. In that case, the Board can either grant approval on the condition that the application be revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the prior to the Board granting approval.

Finally, the Board cannot grant approval unless matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety are addressed. D’Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). And, if information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. Id.

b. **Conclusions as to Grant of Amended Preliminary and Final Major Site Plan Approval.** As set forth above in the factual findings, other than the zoning ordinance regulation set forth above from which the applicant sought a variance, the Board finds that the application and Site Plans will comply with all other applicable zoning ordinance regulations and site plan ordinance requirements, provided however that the conditions set forth below are imposed and complied with. The Board thus concludes that amended preliminary and final major site plan approval can and should be granted, subject to the conditions set forth below being imposed and complied with.

4. **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 also, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of 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 2022), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by Board’s experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON AUGUST 2, 2022 THAT THE APPLICATION IS GRANTED SUBJECT TO CONDITIONS AS FOLLOWS:

C. RELIEF GRANTED

1. **Grant of “C(2)” Variance to Allow the Realigned Driveway to Encroach into the 50-foot Buffer.** Subject to the conditions set forth below being imposed and complied with, the Board hereby grants a “c(2)” variance from zoning ordinance section 21-28.2.a to allow a portion of the proposed realigned driveway to be located and encroach within the required 50 foot buffer to adjoining Block 9601, Lot 8 to the south.

2. **Grant of Amended Preliminary and Final Major Site Approval.** Subject to the conditions set forth below being imposed and complied with, the Board hereby grants preliminary and final major site plan approval to the Site Plans as well as the other documents referenced above to allow construction of the proposed improvements.

D. CONDITIONS

1. **Revisions to Plans and other Documents.** Revisions to the Site Plans and the Stormwater Report shall be made by notes and/or drawings 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 as set forth below. All revisions shall be made and the Site Plans signed by the Board Chair and Secretary by March 20, 2023 (which is six months from the date the within resolution was adopted on September 20, 2022). In the event that the applicant fails to revise the plans and documents as required by the within condition and/or fails to obtain signatures on the site plans as required by the within condition, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant the approvals subject to conditions 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 plat, 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 Board engineering expert and Township Planner. The required revisions and the expert report from which they emanated are as follows:

a. **Following comments emanating in the memo to the Board from David Schley, PP, AICP, Township Planner, dated July 27, 2022 regarding the Site Plans:**

Specific Comments

1. Sheet 1 – In the site plan drawing index, revise the titles of sheets 9 and 10.
2. Sheet 1 – In the Parking Lot Open Space table, update the calculation of the requirement.
3. Sheet 1, etc. – Revise for consistency the various notes regarding wetlands on sheets 1, 2 and 3. The notes should indicate that an amended wetlands conservation easement was recorded in 2018, and the current proposal does not require a further amended easement.

4. Sheet 3, etc. – Correct the title blocks on sheets 3, 4 and 5 to indicate there are 14 sheets in total.
5. Sheet 3, etc. – provide 24-foot wide parking aisle/fire lanes.
6. Sheet 4 – Show parking space and aisle dimensions in both proposed parking areas.
7. Sheet 9 – Check and correct the numbers in the tree replacement calculation.
8. Intentionally omitted – discussed in testimony.

b. **Following comments emanating in the memo to the Board from Larry Plevier, PE, CME, Board Engineer, dated July 29, 2022:**

C. Technical Review Comments

1. Grading and Utility Plan “A”, Sheet 6 of 14 of the Site Plans:
 - a. Revise to remove and replace the existing inlet downstream of the Basin #4 discharge to accommodate the new storm sewer as the proposed invert elevations are below the existing invert out elevation.
 - b. Identify the access driveway for the bioretention basin on the Site Plans in accordance with the New Jersey Stormwater Best Management Practices (BMP) Manual.
 - c. Revise the Site Plans to provide the test pit locations associated with the stormwater bioretention basin #4.
 - d. Revise the proposed invert elevation at the outlet structure to 414.75’ for the proposed 6” underdrain, which is 3.25 feet below the basin floor.
 - e. Revise the proposed outlet structure discharge pipe based on the required revised underdrain invert elevation.
 - f. Provide the proposed top of box elevation for Outlet Structure O.S. #4.
2. Grading and Utility Plan “B”, Sheet 7 of 14 of the Site Plans:
 - a. Provide all test pit locations associated with the stormwater bioretention basin #3A on the Site Plans.
 - b. In accordance with the New Jersey Stormwater BMP Manual, identify the access driveway for the bioretention basin on the Site Plans.

c. Revise the proposed invert elevation at the outlet structure to 393.75' for the proposed 6" underdrain, which is 3.25 feet below the basin floor.

d. In accordance with the Stormwater Report and as noted on the Site Plan, revise the proposed grading for the emergency spillway to reflect a fifty (50) foot spillway, as the current contours depict approximately 40 feet for the spillway for Basin #3A.

3. Landscaping Plan, Sheet 9 of 14 of the Site Plans:

a. Provide the proposed plantings for the small-scale bioretention basins for compliance with the NJ Stormwater BMP Manual for the required 80% TSS removal rates with a 24" deep soil bed.

4. Construction Details "A", Sheet 12 of 14 of the Site Plans:

a. Provide a detail for the proposed full depth pavement reconstruction.

b. Revise the Outlet Structure Design Information table in the Bio-Retention Basin Outlet Structure Detail to indicate the top elevation for Outlet Structure O.S. #4.

c. Revise the Outlet Structure Design Information table in the Bio-Retention Basin Outlet Structure Detail to indicate a revised invert out elevation for O.S. #4 as a result of the revised underdrain invert elevation for Outlet Structure O.S. #4, as indicated above.

d. Revise the Site Plans to show the proposed 6" underdrain connection on the Bio-Retention Basin Outlet Structure Detail.

e. Revise the weir elevation to 420.05' on Section B-B of the Bio-Retention Basin Outlet Structure Detail.

f. If the proposed basin access driveways are more than a graded lawn area, provide a detail for the bioretention basin access driveways.

g. Provide a detail for the proposed exterior stairs and handrail (if required).

h. In accordance with the NJ Stormwater BMP Manual, provide the gravel layer information for the Bio-Retention Basin Detail with Underdrain detail, which shall be 0.5 to 1.5 inch clean, broken stone or pea gravel (AASHTO M-43).

5. Stormwater Report:

a. In accordance with Chapter 12 – Soil Testing Criteria of the NJ Stormwater BMP Manual, provide information to demonstrate compliance with the required one (1) foot separation from the bottom of the stone underdrain course and the estimated seasonal high water table for proposed bioretention basin #3A.

2. **Design, Construction and Location of Improvements.** The applicant shall be required to design, construct and locate the proposed improvements in strict conformity with the Site Plans referenced above after they have been revised in accordance with condition #1 above as well as in strict conformity with the application documents, including exhibit A-1 presented during the hearing, and any deviations other than de minimis field changes shall require amended site plan approval prior to implementation in the field.

3. **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 Site 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). The applicant shall also post the required engineering escrow fees in accordance with the N.J.S.A. 40:55D-53.h. Failure to abide by this condition shall result in the relief granted automatically terminating and becoming null and void

4. **Easements, Dedications and Conveyances.** Any and all easements, dedications and/or conveyances running to and in favor of the Township which are proposed on the Site Plans and/or required as a condition of the within resolution shall, in addition to being identified on the applicant's Site Plans, be contained in separate documents if required by the Township Attorney to be prepared at the direction of the Township Attorney after the metes and bounds descriptions and maps of the easement, dedication and/or conveyance areas have been reviewed and approved by the Township Engineer. 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 maps of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township. The proposed stormwater management easement, which will include both existing and proposed stormwater management improvements, shall be prepared by the Township Attorney, and must be executed by the applicant and recorded with the Somerset County Clerk prior to issuance of a construction permit. Additionally, the submitted O&M Manual must be recorded as part of the easement, after review and approval by the Board Engineer.

5. **Stormwater Management Facilities Logs and Reports.** Submit to the Township Engineer annually any and all maintenance logs, repair logs, and/or inspection reports related to the on-site stormwater management facilities.

6. **As-Built Survey.** Submit for review and approval of the Township Engineer a signed and sealed as-built survey, prepared by a New Jersey licensed land surveyor, showing the as built proposed improvements, final grading, and storm sewer. Approval of the as-built survey shall be a prerequisite prior to recommendation for satisfactory project completion and the release of any unspent escrow fees.

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

8. **Affordable Housing Development Fee.** The applicant shall be required to pay an affordable housing non-residential development fee to the extent such fee is required by applicable law and in an amount provided by applicable law.

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

10. **Other Agency Approvals and Permits.** The within approval shall be conditioned upon the applicant 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, and the applicant shall submit copies of all required regulatory permits and approvals for the proposed improvements to the Planning Board secretary:

- a. Township Board of Health (N/A).
- b. Somerset County Department of Health (N/A).
- c. Bernards Township Sewerage Authority (N/A).
- d. Somerset - Union County Soil Conservation District certification / approval of the soil erosion and sediment control plan.
- e. Somerset County Planning Board approval of any aspect of the proposed development within its jurisdiction, and
- f. NJDEP approval of any aspect of the proposed development within its jurisdiction.

11. **Subject to all Conditions of prior Board of Adjustment and Planning Board Approvals.** The site and the USGA facility shall remain subject to all conditions of prior Board of Adjustment and Planning Board approvals and conditions of approvals not specifically eliminated or modified in the within resolution.

12. **Subject to Other Approvals and Laws.** The within approval and the use of the property are also conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of the property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 2, 2022:

THOSE IN FAVOR: Baumann, Damurjian, Eorio, Mallach, Mastrangelo & Piedici.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on September 20, 2022 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Baumann	X			
Damurjian	X			
Eorio	X			
Mallach	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 September 20, 2022.

Cyndi Kiefer

CYNDI KIEFER, Board Secretary



Resolution of the Township of Bernards Planning Board

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #22-06

Change Order #1 – Increase of \$10,275.00

Professional Services Contract for 2021 Planning Board Planner

Awarded to Francis J. Banisch III PP/AICP, NJ Lic # 33L100168600 and David J. Banisch PP/AICP, NJ Lic # 33L100556500 of the Firm Banisch Associates, Inc.

For a New Not to Exceed Amount of \$15,275.00
(Excluding Charges covered by Escrow Funds)

WHEREAS, the Bernards Township Planning Board adopted Resolution #21-02 on January 19, 2021 in the amount of \$ 5,000.00 appointing Francis J. Banisch III PP/AICP, NJ Lic. # 33L100168600 and David J. Banisch PP/AICP, NJ Lic # 33L100556500, of the firm Banisch Associates, Inc., as Planning Board Planner; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2021 Current Professional Planning Services of the Planning Board Other Expenses, account #1-01-21-180-204; and

NOW, THEREFORE BE IT RESOLVED, by the Bernards Township Planning Board of the Township of Bernards, Somerset County, New Jersey that the Purchasing Agent is hereby authorized to issue a change order to; Francis J. Banisch III PP/AICP, NJ Lic. # 33L100168600 and David J. Banisch PP/AICP, NJ Lic # 33L100556500, of the firm Banisch Associates, Inc., in the amount of \$10,275.00 for a new not to exceed amount of \$15,275.00.

NOW THEREFORE BE IT FINALLY RESOLVED, by the Bernards Township Planning Board of the Township of Bernards, Somerset County that this resolution be placed on file and available for public inspection in the office of the Bernards Township Planning Department.

I agree to the terms as stated in the Resolution and by signing this document, I am committed to following all terms of this award.



Francis J. Banisch III, PP/AICP, NJ Lic # 33L100168600



David J. Banisch, PP/AICP, NJ Lic # 33L100556500

EXPLANATORY STATEMENT:

Continued planning services from David Banisch are required in order to begin review of the Township's Master Plan and development regulations.

Date: 09/20/2022 Cyndi Kiefer, Board Secretary

CFO CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify the line item appropriations to be charged are Planning Board Other Expenses, for Professional Planning Services, account Fees and Compensation # 1-01-21-180-204 for an additional amount of \$10,275.00.00 for a new not to exceed amount of \$15,275.00.

Date: August 30, 2022



Sean McCarthy, Chief Financial Officer

PURCHASING CERTIFICATION

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

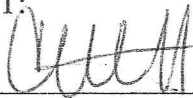


Francis J. Decibus, QPA
Purchasing Agent

Date: August 29, 2022

Dated: September 20, 2022

ATTEST:

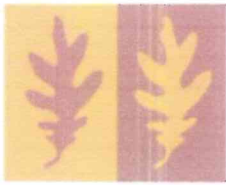


Cyndi Kiefer, Board Secretary

ADOPTED:



Kathleen I. Piedici, Board Chairman



Resolution of the Township of Bernards Planning Board

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #22-07

Change Order #1 – Increase of \$35,000.00

Professional Services Contract for 2022 Planning Board Planner

Awarded to Francis J. Banisch III PP/AICP, NJ Lic # 33L100168600 and David J. Banisch PP/AICP,
NJ Lic # 33L100556500 of the Firm Banisch Associates, Inc.

For a New Not to Exceed Amount of \$40,000.00

(Excluding Charges covered by Escrow Funds)

WHEREAS, the Bernards Township Planning Board adopted Resolution #22-02 on January 18, 2022 in the amount of \$ 5,000.00 appointing Francis J. Banisch III PP/AICP, NJ Lic. # 33L100168600 and David J. Banisch PP/AICP, NJ Lic # 33L100556500, of the firm Banisch Associates, Inc., as Planning Board Planner; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2022 Current Professional Planning Services of the Planning Board Other Expenses, account #2-01-21-180-204; and

NOW, THEREFORE BE IT RESOLVED, by the Bernards Township Planning Board of the Township of Bernards, Somerset County, New Jersey that the Purchasing Agent is hereby authorized to issue a change order to; Francis J. Banisch III PP/AICP, NJ Lic. # 33L100168600 and David J. Banisch PP/AICP, NJ Lic # 33L100556500, of the firm Banisch Associates, Inc., in the amount of \$35,000.00 for a new not to exceed amount of \$40,000.00.

NOW THEREFORE BE IT FINALLY RESOLVED, by the Bernards Township Planning Board of the Township of Bernards, Somerset County that this resolution be placed on file and available for public inspection in the office of the Bernards Township Planning Department.

I agree to the terms as stated in the Resolution and by signing this document, I am committed to following all terms of this award.



Francis J. Banisch III, PP/AICP, NJ Lic # 33L100168600



David J. Banisch, PP/AICP, NJ Lic # 33L100556500

EXPLANATORY STATEMENT:

Continued planning services from David Banisch are required in order to begin review of the Township's Master Plan and development regulations.

Date: 08/29/2022 Cyndi Kiefer, Board Secretary

CFO CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify the line item appropriations to be charged are Planning Board Other Expenses, for Professional Planning Services, account Fees and Compensation #2-01-21-180-204 for an additional amount of \$35,000.00.00 for a new not to exceed amount of \$40,000.00.

Date: August 30, 2022



Sean McCarthy, Chief Financial Officer

PURCHASING CERTIFICATION

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

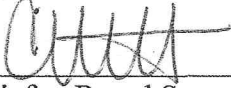

For Purchasing Agent

Date: August 29, 2022

Francis J. Decibus, QPA
Purchasing Agent

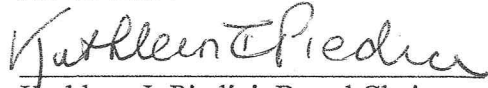
Dated: September 20, 2022

ATTEST:



Cyndi Kiefer, Board Secretary

ADOPTED:



Kathleen I. Piedici, Board Chairman