

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v2
Regular Meeting
November 4, 2020

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:30 PM.

FLAG SALUTE

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

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk, all on October 5, 2020 and was electronically mailed to all those people who have requested individual notice.

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

ROLL CALL:

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

On motion by Ms. Genirs seconded by Mr. Tancredi, all eligible in favor and carried, the absences of Mr. Juwana, Mr. Kraus and Mr. Seville were excused.

APPROVAL OF MINUTES

October 7, 2020 – Regular Session– On motion by Mr. Tancredi, seconded by Ms. Genirs, all eligible in favor and carried, the minutes were adopted as *amended*. Mr. Tancredi noted that he had amended his motion to approve the A. Sposato Realty Company Inc. & Sposato Realty LP application (ZB20-016) to indicate that the applicants had satisfied the positive and negative criteria for both "c(1)" and "c(2)" variance relief. Abstention for absence: Eorio

APPROVAL OF RESOLUTIONS

A. Sposato Realty Company Inc. & Sposato Realty LP; Block 1608, Lots 10.02 & 11; 31 & 35 East Craig Street; Bulk Variances; ZB20-016 (approved) – Mr. Warner advised that the resolution would be revised to include Mr. Tancredi's amended motion as indicated above and would be available for memorialization at the next meeting.

RESOLUTION – For the Township of Bernards Zoning Board of Adjustment to Adopt Emergency Remote Meeting Protocols, Procedures and Requirements for Public Participation at Remote Meetings – Ms. Genirs moved approval of the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Clarke, Seldon T. & Mary Louise; Block 304, Lot 2; 35 Old Farm Road; Bulk Variance; ZB20-020

Present: Mary Louise and Seldon T. Clarke, Applicants
Candice J. Davis, PE, Engineer for the Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. & Mrs. Clarke, Ms. Davis, Mr. Quinn and Mr. Schley were duly sworn.

Mary Louise Clarke, residing at 35 Old Farm Road, testified that she and Mr. Clarke propose to construct a two-story addition to the existing dwelling including a new informal front entry, a new covered area at an existing side/mudroom entry and an expanded office. The second-floor expansion, most of which is above the existing first floor, includes a bedroom, bathroom, and hall/closet space. An existing side walkway is to be replaced/relocated and the existing driveway is to be expanded to maintain alignment with the relocated two-car garage.

Candice J. Davis, PE, engineer with the firm of *Yannaccone, Villa and Aldrich, LLC*, Chester, NJ, was accepted by the Board as an expert in the field of civil engineering. She gave a brief description of the property noting that it is entirely encumbered by stream buffers and that the required conservation easement has already been recorded with the Township. She then testified that the areas impacted by the project are not located within the easement but are located within the minimum required 100' setback as measured from the midpoint of the zone two buffer (as opposed to being measured from the property line) and therefore the project requires a variance according to the Township Stream Buffer Conservation Ordinance. Finally, she noted that the subject property is a corner lot with frontage on both Old Farm Road and Sandstream Lane, the latter of which is considered a "paper street." Although the yard area along Sandstream Lane is considered a "front yard" by ordinance, it functions as a side yard for the Applicants. If this area was actually a side yard, the minimum required setback would be 50' instead of 100' and no variance would be required.

Two (2) photos of the property were entered into evidence as **Exhibit A-1** and **Exhibit A-2**. Seldon T. Clarke, residing at 35 Old Farm Road, testified that he had taken the pictures (and also those submitted with the application). He stated that they showed that Sandstream Lane was not visible from the house and that the house was not visible from Sandstream Lane, hence the project would have no visual impact on the surrounding areas.

Mrs. Clarke stipulated, as a condition of approval, to the installation of a silt fence prior to any land disturbance. Mr. Quinn stated that double silt fences, as requested by the Environmental Commission's memo dated 10/27/2020, would not be necessary given the size of the project area and the lack of steep slopes. Mrs. Clarke also stipulated to supplying the necessary documentation to demonstrate compliance with the Township Flood Damage Prevention Ordinance. Finally, she stipulated that the exterior of the addition would be substantially similar in color, materials and architecture style to the existing dwelling.

Chairman Breslin opened the hearing to the public for questions or comments. Hearing none from either those that were present or via telephone, he closed that portion of the hearing.

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

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

Motion carried.

PUBLIC HEARING (continued from 10/07/2020)

[Silver Living LLC](#); Block 1607, Lot 2; 14 North Maple Ave; Bulk Variances; ZB20-015

Mr. Warner stated that, at the request of the Applicant, the Silver Living LLC application (ZB20-015) scheduled to be heard at this meeting shall be carried to the January 6, 2021 meeting of this Board *with no further notice required*.

COMMENTS FROM MEMBERS OR STAFF

Chairman Breslin stated that the November 12, 2020 meeting would be cancelled.

ADJOURN

On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the meeting was adjourned at 8:08 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 12/-9/2020

11/11/2020 v2 dssw

**TOWNSHIP OF BERNARDS
2020 ZONING BOARD OF ADJUSTMENT APPLICATION**

RECEIVED

OCT - 8 2020

PLANNING/ZONING BOARDS

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance | <input type="checkbox"/> Appeal of Zoning Officer's Decision |
| <input type="checkbox"/> Use ("d") Variance | <input type="checkbox"/> Interpretation of Zoning Ordinance |
| <input type="checkbox"/> Conditional Use ("d") Variance | <input type="checkbox"/> Minor Subdivision |
| <input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance | <input type="checkbox"/> Major Subdivision - Preliminary / Final |
| <input type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Other (specify): |

1. APPLICANT: Mary Lou and Seldon T. Clarke

Address: 35 Old Farm Rd Basking Ridge N.J 07920

Phone: (home) NA (work) NA (mobile) 201-259-5788

Email (will be used for official notifications): mlclarke@mac.com

2. OWNER (if different from applicant): N/A

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: N/A

Address: _____

Phone: _____ Email (will be used for official notifications): _____

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: Dan Encin (Mendham Design) Profession: Architect

Address: 23 East Main St. Mendham, NJ 07945

Phone: 973-543-0956 Email (will be used for official notifications): dan.encin@mendhamdesign.com

5. PROPERTY INFORMATION: Block(s): 304 Lot(s): 2 Zone: R1

Street Address: 35 Old Farm Rd Basking Ridge, NJ 07920 Total Area (square feet/acres): 3.031 acres

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain or attach Board resolution) _____

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain) _____

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

[☒] No [] Yes (if yes, explain) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

Residential Home - * See Attachment marked as # 9

Requesting variance to add mudroom, new two story garage with bedroom above and additional 6 feet extension of existing den.

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):

Requesting variance relief from building set back requirement related to Bernards Township Zone 2 Stream Buffer.

Ordinance Section 21-14.4.C.2. a.4 * See Attachment - ETI

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____

Current set back requirements are from middle of stream to the middle of our house which prevent us from expanding footprint without a variance. Existing garage is structurally unsafe and needs to be replaced.

Home is in need of mudroom for animals

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Mary Ann Clark and St. T. Clark hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): Mary Ann Clark and St. T. Clark

Sworn and subscribed before me, this 23 day of September, 2020.

Notary

ANTHONY PINTO

Notary Public

State of New Jersey

My Commission Expires May 16, 2022

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

I/we, _____ the owner(s) of the property described in this application,

hereby authorize _____ to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): _____

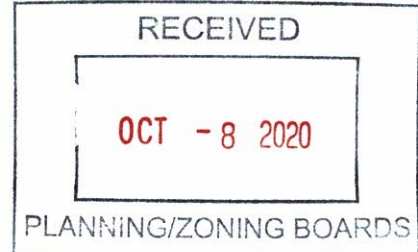
Sworn and subscribed before me, this _____ day of _____, 2020.

Notary

#9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL REQUEST:

9

Our application to Bernard's Township is for variance relief from the building setback requirement related to the Bernard's Township Zone 2 Stream Buffer. The Bernard's Township ordinance section 21-14.4.C.2.a.4. states that "No minimum required yard may extend into the Zone 2 (Stream Buffer) more than half the distance between the outer boundaries of Zone One and Zone Two". The proposed addition requires a building setback variance from the midpoint of Stream Buffer Zone 2 equal to 79.0 ft., where 100 ft. is required.



TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

RECEIVED

AUG 17 2020

PLANNING/ZONING BOARDS

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance | <input type="checkbox"/> Appeal of Zoning Officer's Decision |
| <input type="checkbox"/> Use ("d") Variance | <input type="checkbox"/> Interpretation of Zoning Ordinance |
| <input type="checkbox"/> Conditional Use ("d") Variance | <input type="checkbox"/> Minor Subdivision |
| <input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance | <input type="checkbox"/> Major Subdivision - Preliminary / Final |
| <input type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Other (specify): _____ |

1. APPLICANT: Silver Living LLC

Address: 106 Woodbine Circle, New Providence, New Jersey 07974

Phone: (home) (201) 310-8921 (work) Same (mobile) Same

Email (will be used for official notifications): scarabaggiom@gmail.com

2. OWNER (if different from applicant): Same as Applicant

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: Frederick B. Zelley / Bisogno, Loeffler & Zelley, L.L.C.

Address: 88 South Finley Avenue, P.O. Box 408, Basking Ridge, New Jersey 07920

Phone: (908) 766-6666 Email (will be used for official notifications): fzelley@baskingridgelaw.com

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: William G. Hollows (please also see Addendum) Profession: Professional Engineer

Address: Murphy & Hollows Associates LLC, 192 Central Avenue, Stirling, New Jersey 07980

Phone: (908) 580-1255 Email (will be used for official notifications): murphyhollows@gmail.com

5. PROPERTY INFORMATION: Block(s): 1607 Lot(s): 2 Zone: R-7

Street Address: 14 North Maple Avenue Total Area (square feet/acres): 8,276sf/0.19ac

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain or attach Board resolution) _____

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain) _____ The following non-conformities exist but are all believed to predate the zoning ordinance: lot area, lot width, front yard setbacks (both streets), rear yard setback and improvable lot area.

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

[] No [X] Yes (if yes, explain and attach copy) Sight easement for intersection of East Allen Street and North Maple Avenue

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

Please see Addendum

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):

Ordinance Section 21-15.1(d)(1) and Table 501

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION:

Please see Addendum

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Silver Living LLC by Marco Scarabaggio, Managing Member hereby deposes and says that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): Marco Scarabaggio and _____

Sworn and subscribed before me, this 31st day of July, 2020.

405 [Signature]
Notary Frederick B. Zelle
An Attorney at Law of the
State of New Jersey

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

I/we, _____ the owner(s) of the property described in this application,

hereby authorize _____ to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): _____

Sworn and subscribed before me, this _____ day of _____, 2019.

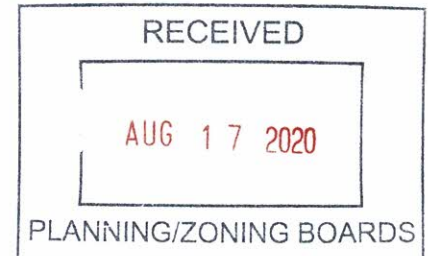
Notary

ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION
SILVER LIVING LLC
14 NORTH MAPLE AVENUE, BLOCK 1607, LOT 2

The following are responses to the respective Application Items noted "Please see Addendum":

4. [Additional Professionals]

Douglas Battersby, R.A.
Battersby Architecture and Design
P.O. Box 370
4 Ramapo Valley Road
Oakland, New Jersey 07436
201-316-7478
Doug@BattersbyAD.com



9. [Description of the Existing Property and the Proposal/Request]

The subject property is the southwest corner lot at the intersection of North Maple Avenue and East Allen Street. The property is surrounded by the Presbyterian Church's cemetery to its south, a single family residence to its west, East Allen Street and the lawn of Lot 23 to its north and North Maple Avenue and single family homes thereon to its east. The only structure on the property is a single family, two and one half story frame residence, which is in a severe state of disrepair. The Applicant recently purchased the property from the survivor of two related women (mother and daughter or sisters) who had owned it since 1983. While the Applicant has no direct knowledge of the history of the home, the existence of three (3) separate electric meter cases on its exterior (only one holding a meter presently), suggests that the home was at some point used as a multi-family residence, presumably without legal authority.

The Applicant proposes to raze the existing single family home down to the foundation and to replace it with a modern home of similar architecture to the existing home, utilizing the existing foundation provided it is structurally sound. As noted, the existing home has fallen into a state of extreme disrepair, and in any event its internal configuration is not reasonably conducive to reconfiguration to meet the needs of a modern family. The proposed new home would better meet the needs and desires of a present day family in Bernards Township, given the number, types and layout of the interior rooms and given the inclusion of an attached two car garage and a two car driveway (the existing home has no onsite parking, requiring parking on the very narrow East Allen Street).

10. [Description of Requested Variances or Exceptions]

This is an application for bulk variances for front, side and rear yard setbacks and for lot coverage. The subject lot is also non-conforming as to area, width and improvable area, but these are existing non-conformities that would not be exacerbated by the Applicant's proposal.

With the exception of the aforementioned variances, the Applicant believes that no other variance, waiver or exception is required in order to grant the approval requested. However, if the Board directs that additional variance(s), waiver(s) or exception(s) is/are needed, the Applicant may seek the same in accordance with such direction.

11. [Arguments in Support of Application]

The variances requested are "C-1" variances, based upon the hardship created by the lot being undersized and being a corner lot, and by the location of the lawfully existing home, the foundation of which the Applicant hopes to preserve. The variances are also supported under "C-2" a/k/a "flexible C" analysis, in that the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*, would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. Specifically, the proposed redevelopment of the lot would serve the following purposes of the MLUL: (h) (to encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight); (i) (to promote a desirable visual environment through creative development techniques and good civic design and arrangement); and (j) (to promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land). Furthermore, the replacement of the existing deteriorated and outdated home with a modern home would assist in conserving property values in the neighborhood as whole, which remains a purpose of land use regulation even though that goal is not expressly stated in N.J.S.A. 40:55D-2. Home Builders League of S. Jersey, Inc. v. Township of Berlin, 81 N.J. 127, 144-45 (1979).

The Negative Criteria are also satisfied as the variances can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. Like the existing home, the proposed home will be one of only three homes on East Allen Street, with open space to its south (cemetery) and to its north (large lawn area on Lot 23). While the home to its west (which was recently constructed with similar variance relief) will obviously be in close proximity, the two homes together will be surrounded to the south and west by the openness of the cemetery. Given these surroundings, having a larger home on this particular undersized lot will not have a detrimental effect upon the public good or the zone plan.

Respectfully Submitted,

BISOGNO, LOEFFLER & ZELLEY, LLC


By: Frederick B. Zelley, Esq.
Attorneys for the Applicant Silver Living LLC

Dated: August 16, 2020