

TOWNSHIP OF BERNARDS **ZONING BOARD OF ADJUSTMENT**

REGULAR MEETING AGENDA v2

Warren Craft Meeting Room

December 8, 2021

7:30 PM

This meeting will be held in person in the Warren Craft Meeting Room. In addition, the public will be able to view the meeting live on Optimum/Cablevision TV – Channel 15 and Verizon FIOS TV – Channel 35. For those interested in watching on their computers, the link will be available at 7:30 PM by clicking on the “Watch the Meeting Live” icon on the Bernards Township Zoning Board of Adjustment web page. Please note that all questions/comments must be made in person.

- 1. CALL TO ORDER**
- 2. FLAG SALUTE**
- 3. OPEN PUBLIC MEETING STATEMENT**
- 4. ROLL CALL**
- 5. APPROVAL OF MINUTES**
 - A.** November 3, 2021 – Regular Session
- 6. APPROVAL OF RESOLUTIONS**
 - A.** Ferrier, Graham & Carrie; Block 401, Lot 15; 107 Childs Road; ZB21-027 (approved)
 - B.** Marchelli, F.& Basile, L.; Block 3801, Lot 18; 35 Normandy Court ZB21-026 (approved)
 - C.** Haley, Andrew & Kimberly; Block 4002, Lot 3; 5 Dawn Drive; ZB21-029 (approved)
- 7. APPOINTMENT OF LANDSCAPE COMMITTEE**
 - A.** A. Sposato Realty Co., Inc./Sposato Realty LP; East Craig Street; ZB20-016
- 8. PUBLIC HEARING** (continued from 10/06/2021)
 - A.** [Baston 95, LLC](#); Block 704, Lot 1.01; 95 Morristown Road; Preliminary/Final Site Plan, Use Variance, Bulk Variances; ZB21-015
- 9. COMPLETENESS AND PUBLIC HEARING**
 - A.** [Ahmed, F./Faizan, A.](#); Block 2301, Lot 5; 62 Wisteria Way; Bulk Variance; ZB21-030
- 10. COMMENTS FROM MEMBERS**
- 11. COMMENTS FROM STAFF**
- 12. ADJOURN**

12/06/2021dssw

TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Baston 95, LLC

Address: c/o Afrim Berisha, 20 Gold Boulevard, Basking Ridge, NJ 07920

Phone: (home) N/A (work) N/A (mobile) 908-400-3481

Email (will be used for official notifications): afrimbistro73@gmail.com

2. OWNER (if different from applicant): Same

Address: _____

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

3. ATTORNEY: Bisogno, Loeffler & Zelley

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

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

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

Name: See attached Contact Sheet Profession: _____

Address: _____

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

5. PROPERTY INFORMATION: Block(s): 704 Lot(s): 1.01 Zone: R-6

Street Address: 95 Morristown Road Total Area (square feet/acres): 98,725 s.f.; 2.27 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) See attached 4 Resolutions (Docket No. 81-14; 93-14; ZB05-016 and ZB16-032.

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☐ No ☒ Yes (if yes, explain) Property is a non-conforming use and inherently has zoning violations. See attached Addendum explaining application.

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

☒ No ☐ Yes (if yes, explain and attach copy) All easements are utility easements.

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

See attached Addendum describing property and proposal/request.

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

See attached Addendum.

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

See attached Addendum.


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

APPLICANT(S) SIGN HERE:

I/we, Afrim Berisha ~~and~~ _____ 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):  ~~and~~ Managing Member of Owner

Sworn and subscribed before me, this 16 day of FEBRUARY, 2019 ~~2020~~ ²⁰²¹


Notary **PATRICIA A. BOURLIER**
A Notary Public of New Jersey
My Commission Expires August 28, 2024

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
STATEMENT OF FACTS, VARIANCES
AND JUSTIFICATION FOR SAME

This Application concerns the restaurant known as “The Vine” located at 95 Morristown Road (U.S. Route 202) in the Basking Ridge section of Bernards Township. The Lot is 2.27 acres and is located in the R-6 Zone of the Township. A restaurant has been at this location since the 1930s and has been recognized by this Board as a non-conforming use.

Applicant originally intended to renovate the existing restaurant building and maintain the same square footage, parking and lot coverage. However, because of the age of the structure, the deterioration of the mechanical systems and lack of handicap access, the Applicant has elected to demolish the existing building and replace it with a new modern and efficient building with handicap access and new HVAC systems in order to improve not only accessibility but air quality. This would make the structure a safer dining experience in the post COVID-19 era.

The Application is for Preliminary and Final Major Site Plan approval, variances, exceptions and waivers. The existing building size will be increased from approximately 6352 s.f. (1st and second floor) to 7,511 s.f. (1st and second floor). See attached Architectural Plans. This is an increase of 1,159 s.f. Applicant intends to retain the same number of parking spaces at 83¹; maintain the same number of seats (165 indoor plus 50 outdoor)², and maintain the same lot coverage at 38.3%³. Note, there is an additional 190 s.f. in the cellar for office and employee restroom.

The variance previously granted for a solid wall in the front yard is to be eliminated.

Applicant now seeks the following relief from the Board:

- A. Preliminary and Final Major Site Plan approval.
- B. A use variance or an expansion of a non-conforming use by approximately 1,159 s.f.
- C. A parking variance where 151 is required and 83 provided.
- D. Accessory building separation of 10’ is required and Applicant provides 2.3’.
- E. A 50’ buffer to the residential zone is required and Applicant proposes 30.5’. (See Resolution #ZB16-032 at page 1).

¹ Resolution #81-14; Page 1

² Resolution #ZB16-032; Page 7

³ Resolution #ZB05-016I; Page 3

As noted above, lot coverage will remain the same as previously approved in Resolution #3 below.

The justification for the variances are as follows:

Positive Criteria

A. **Use Variance or Expansion of a Non-Conforming Use:** Proofs required in establishing the justification for a use variance or an expansion of a non-conforming use are somewhat similar in nature. This lot has been used as a restaurant since the 1930s. It has been temporarily closed because of the COVID-19 pandemic which has decimated the restaurant industry. It was not a voluntary closure and there was no intent to voluntarily abandon the use.

A use variance is justified in our case because the general welfare is served because the use as a restaurant is peculiarly fitted to the particular location. Also, the building proposed by the applicant will create a desirable visual environment, with enhanced safety features of a new HVAC system, more space between tables handicap accessibility which is not present in the existing restaurant. Particular suitability is also demonstrated by the fact that the use is on a U.S. highway and adjacent to office complexes. There is also a substantial landscaping being proposed.

B. **Parking Variance:** The Bernards Township Zoning Ordinance requires 151 parking spaces based upon the square footage of the restaurant. Applicant has 83 spaces which has existed for many years without issue. This parking variance was approved previously. Applicant's traffic engineer will testify that the 83 spaces can adequately accommodate the modest increase in square footage of the restaurant.

C. **Accessory Building Location:** The Bernards Township Zoning Ordinance requires a 10' separation between accessory buildings and Applicant has 2.3'. This condition has existed for many years and will be addressed by the Applicant's planner.

D. **50' Buffer to Residential Zone:** Currently there is a dumpster in the buffer area. This dumpster will be removed. The variance was previously approved by this Board. Additional landscaping is being proposed in this area to mitigate against any impact on the residential zone.

Negative Criteria

There is no substantial detriment to the public good nor is there any substantial detriment to the Zone Plan and the Zoning Ordinance of Bernards Township (emphasis added). The critical word here is "substantial" and involves a balancing of the benefits of the variance against the detriments. As was pointed out, the building has been at this location for over 90 years and is located on a U.S. highway adjacent to office complexes. In fact, what is being proposed by the applicant will be a benefit to the surrounding area. The general welfare is served for the following reasons:

- A. It replaces a deteriorating structure with a new modern structure.
- B. Improved aesthetics of the building.
- C. A new landscaping plan is proposed which improves the aesthetics of the building and provides privacy for surrounding residents.
- D. It creates a safer dining experience by providing more space between tables.
- E. A new HVAC system is proposed which also enhances safety.
- F. It provides handicap accessibility which does not exist today.

There is no negative aspects to this construction since the building exists and has been here for 90 years.

In regard to the use variance and the enhanced burden of proof set forth in Medici v. BPRC, 107 N.J. (1) 1987, the Township Committee did not rezone the property for a restaurant because it would be a one lot zone. The adjacent residential zones and the E zones does not allow for restaurants. The Township is aware that the matter has been before the Board of Adjustment on several occasions and the Board has appropriately handled the case on all occasions.

TOWNSHIP OF BERNARDS
2021 ZONING BOARD OF ADJUSTMENT APPLICATION

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

Address: 11 Ridge Road, Green Brook, NJ

Phone: (home) _____ (work) _____ (mobile) 732-579-7443

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

2. OWNER (if different from applicant): _____

Address: _____

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

3. ATTORNEY: _____

Address: _____

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

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

Name: Andrew Wu Profession: Engineer

Address: Formosa Engineering Inc. 168 U.S. Route 1 Edison, New Jersey 08817

Phone: 732-632-8087 Email (will be used for official notifications): awformosaeng@aol.com

5. PROPERTY INFORMATION: Block(s): 2301 Lot(s): 5 Zone: R-1

Street Address: 62 Wisteria way, Basking Ridge Total Area (square feet/acres): 138207.7 sqft/ 3.1728 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?

[x] No [] Yes (if yes, explain) There is emergency access easement on the property _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: The property is over 3 Acres and in R-1 Zone. There is emergency access easement on the property that pass-through the middle of the property that is also contributing to the issue. This emergency access is almost never used. We want to place the house facing the street. If we do not put house facing the street it drastically impacts value of the house.

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):
Steep Slope ordinance section no 21-14.2

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____
1) The house should face the street that is important for the value of the house. The emergency access easement passes through the middle of the property and forcing us to put it on the current location (that is side of easement) causing to be partially on steep slope. 2) Immediate neighbors' property located 72 wisteria way have a pool on the side. If we rotate the house, it will be facing their pool that is not desirable for obvious reasons. 3) Facing the house towards slightly northeast as proposed is sacred direction culturally and religiously for us.

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

APPLICANT(S) SIGN HERE:

I/we, Anila Faizan and Faizan Ahmed 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): [Signature] and [Signature]

Sworn and subscribed before me, this 27th day of SEPTEMBER, 2021.

Notary

EPIPHANY M VIOLA
Notary Public - State of New Jersey
My Commission Expires Jul 15, 2024

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 _____, 20__.

Notary