

TOWNSHIP OF BERNARDS **PLANNING BOARD**

MINUTES **REGULAR SESSION v3** October 19, 2021

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

FLAG SALUTE

OPEN MEETING STATEMENT

Chairwoman Piedici read the following open meeting and procedural statement:

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this meeting of the Planning Board of the Township of Bernards was posted on the bulletin Board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, NJ, was mailed to the Bernardsville News, Whippany, and to the Courier News, Bridgewater on January 20, 2021 and was electronically mailed to all those people who have requested individual notice.

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

ROLL CALL:

Members Present: Baumann, Crane, Damurjian, McNally, Manduke, Mastrangelo, Piedici
Members Absent: Eorio, Fields
Members Late: Asay* (8:12 PM)
Also Present: Board Attorney, Jonathan E. Drill, Esq.; Township Planner, David Schley, PP, AICP;
Board Planner, David Banisch, PP, AICP; Board Secretary, Cyndi Kiefer

*Via telephone

Moved by Mr. Baumann, seconded by Mr. Damurjian, all eligible in favor and carried, that the absences of Mr. Eorio and Mayor Fields be excused.

APPROVAL OF MINUTES

September 21, 2021 - Regular Session - On motion made by Mr. Baumann and seconded by Mr. Damurjian, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF RESOLUTIONS

Bernards Plaza Associates LLC; Block 8501, Lots 39, 43, 44; 403 King George Road; PB20-003 (approved) – Ms. Manduke moved approval of the resolution as drafted. Ms. Mastrangelo seconded.

Roll call: Aye: McNally, Manduke, Mastrangelo, Piedici
Nay: NONE
Ineligible: Baumann (did not vote), Crane (recused), Damurjian (voted to deny)
Motion carried.

Moye, William and Carol; Block 11401, Lot 11; 11 Mountain Road; PB17-001 (approved) - Committeeman McNally moved approval of the resolution as revised. Mr. Crane seconded.

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

United States Golf Association; PB17-003B; Block 9601, Lot 5.01; 77 Liberty Corner Road; PB17-003B (approved) - Mr. Baumann moved approval of the resolution as drafted. Ms. Manduke seconded.

Roll call: Aye: Baumann, Damurjian, Manduke, Mastrangelo, Piedici
Nay: NONE
Ineligible: Crane (recused), McNally (absent)
Motion carried.

MODIFICATION OF CONDITION

Emerald Valley Homeowners Association Inc.; Block 11401, Lots 37.01 & 42; 16 Harvest Way & 181 Mountain Road; Extension of Time to Sign Plans; PB20-001A

Mr. Schley gave a brief summary of the application and the request by the Applicant for an extension of time to get plans signed as outlined in Condition #1.

Hearing no questions from the Board, Chairwoman Piedici opened the meeting to the public for questions or comments. Hearing none, the meeting was closed.

Ms. Mastrangelo moved approval to extend the time to sign plans until February 18, 2022. Ms. Manduke seconded.

Roll call: Aye: Baumann, Damurjian, McNally, Manduke, Mastrangelo, Piedici
Nay: NONE
Ineligible: Crane (recused)
Motion carried.

APPOINTMENT OF LANDSCAPING AND LIGHTING COMMITTEE

Fairmount Cemetery Association of Newark and Somerset Hills; Block 2301, Lots 12 & 18; 95 Mount Airy Road; PB19-007

Mr. Schley advised that Conditions #4 and #5 of this application's memorializing resolution dated 06/02/2020 state that the lighting and landscaping shall be subject to inspection by the Board's Lighting and Landscaping Committee. Mr. Baumann, Mr. Damurjian and Ms. Mastrangelo volunteered to visit the site and conduct the inspections.

MASTER PLAN REVIEW – Chapter VI – Community Facilities

Mr. Banisch stated that the Community Facilities Plan Element provides an evaluation of the public service and facility needs and inventory such as schools, fire protection, police, first aid and the library while also anticipating future community facilities and service needs based on the Township's present and future demographic composition. He added that many of the sections in this element had been written/revised to focus on these future needs by the specific agencies that have purview over them. Mr. Banisch noted that the State has enacted performance standards for electric vehicle charging facilities and advised that Item #9 had been added to the list of objectives to address these facilities and also private solar power installations, to ensure compatibility with the residential character of existing neighborhoods.

Several members of the Board felt that the section outlining the services provided by the Police Department did not adequately reflect the significant and multi-dimensional impact that those services have on the Township.

Mr. Banisch agreed to revise that section and to provide an explanation as to how the shared court services and handover of dispatch to the county came to be.

At 8:12 PM, Ms. Asay joined the meeting via telephone.

After further Board discussion about this element, Chairwoman Piedici advised that once all of the elements had been reviewed/revised, a final draft of the entire Master Plan would be voted on.

Hearing no further comments from the Board, Chairwoman Piedici opened the meeting to the public for comment. Members of the public commented on topics as follows:

- Todd Edelstein, 172 Riverside Drive – number of first aid squad/police on staff, update of BOE numbers

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

Chairwoman Piedici asked Mr. Banisch to have the second draft of the Community Facilities Plan Element and a timeline for completion of the Master Plan updating process in 2022 available for the December 7, 2021 meeting.

COMMENTS FROM MEMBERS OR STAFF

Chairwoman Piedici announced the cancellation of the meetings scheduled for November 2nd and 16th, 2021.

ADJOURN

Moved by Ms. Mastrangelo, seconded by Mr. Crane, all eligible in favor and carried, the meeting was adjourned at 8:28 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Planning Board

Adopted as revised 12-07-2021

10/27/2021 dskpjd

BERNARDS TOWNSHIP PLANNING BOARD

BERNARDS PLAZA ASSOCIATES, LLC

“DEWY MEADOW”

BLOCK 8501, LOTS 39, 43 & 44

403 KING GEORGE ROAD

APPLICATION NO. PB-20-003

**RESOLUTION MEMORIALIZING GRANT OF PRELIMINARY AND FINAL SITE
PLAN APPROVAL FOR RECREATIONAL PATH IMPROVEMENTS TO LOT 44**

WHEREAS, Bernards Plaza Associates, LLC (the “**applicant**”) is the owner of certain property located in the Township of Bernards (the “**Township**”) comprised of three lots totaling approximately 23-acres which are designated on the Township tax maps as Block 8501, Lots 39, 43 and 44 (the “**property**”) and which property is located at 403 King George Road and is commonly known as “Dewy Meadow”, and which property is situated in the B-5 Village Center zoning district (“**B-5 zone**”) and the Multifamily Housing Overlay zoning district (“**MFH overlay**”);

WHEREAS, the applicant previously obtained from the Bernards Township Planning Board (the “**Board**”) preliminary and final site plan approval with “c(2)” variance relief, exceptions, and an RSIS exception (the “**2019 approvals**”) to allow construction of two multifamily residential inclusionary rental apartment buildings on Lots 39 and 43 to include a total of 198 units, 30 of which units restricted to low and moderate income households, along with related improvements, with the two buildings consisting of the following: Building “A” to contain 108 apartments units, 137 parking spaces, a clubhouse, leasing and community center, lobby and utility rooms, and Building “B” to contain 90 apartments, 116 parking spaces, a lobby, and utility rooms (both buildings and all improvements referred to as the “**proposed development**”), all as memorialized in a Resolution adopted by the Board on May 21, 2019 (the “**May 21, 2019 resolution**”);

WHEREAS, the applicant submitted an application (the “**application**”) to the Board seeking preliminary and final site plan approval to allow construction of a permitted recreational facility, specifically, an approximately 1,000-foot-long oval-shaped, mulch walking path on Lot 44, along with four benches distributed around the oval (the “**recreational improvements**”);

WHEREAS, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:55D-46 and -50;

WHEREAS, a number of documents were submitted by the applicant, as well as Board and Township experts and officials with regard to the application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, 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. “Preliminary and Final Site Plan for Dewy Meadow Village”, prepared by Catherine Mueller, PE of Page-Mueller Engineering Consultants, PC, dated September 21, 2020 (sheets WP-1 and WP-2) (the “site plans”);

WHEREAS, the Board considered the application at a duly noticed public hearing on November 17, 2020, with affidavits of publication and service of notice being submitted to the Board and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearings the applicant was represented by Danielle Kinback, Esq., and the Board was represented by Jonathan E. Drill, Esq.;

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. Catherine Mueller, PE, CME (applicant’s engineering expert),
2. John Peel (applicant’s environmental expert),
3. Joseph Korn (applicant’s project manager),
4. David Banisch, PP (Board’s planning expert) and
5. David Schley, PP (Township Planner);

WHEREAS, no exhibits were entered into the record during the hearing;

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

A. FACTUAL FINDINGS

1. **The Property, Zoning, 2019 Approvals and Relevant Actions Subsequent to 2019 Approvals.** As set forth above, the property at the time of the submission of the application consisted of three lots, Block 8501, Lots 39, 43 and 44, totaling approximately 23-acres located as 403 King George Road, and which property is commonly known as “Dewy Meadow” and is situated in the B-5 zone and the MFH overlay zone. The applicant previously

obtained the 2019 approvals, which included preliminary and final site plan approval and related relief to allow for the construction of the proposed development, a 198-unit multifamily inclusionary residential development, as memorialized in the May 21, 2019 resolution. The 2019 approvals approved the proposed development on Lots 39 and 43 only as Lot 44 was not situated at that time in the B-5 zone and/or MFH overlay zone. However, as a condition of the 2019 approvals, the applicant was obligated to apply for and obtain approvals for the use of Lot 44 for active and/or passive recreational amenities. Lot 44 is predominately wetlands and was formerly owned by the Township and developed as a soccer field with a field house consisting of two bathrooms and a storage room. Since the time of the 2019 approvals, the applicant obtained title to Lot 44, and Lot 44 was rezoned to be included in the B-5 zone and to allow for recreation facilities on Lot 44.

2. **The Application and Requested Relief.** As set forth above, the proposed recreational improvements include the construction of an approximately 1,000-foot-long oval-shaped mulch walking path on Lot 44, along with four benches distributed around the oval. The existing field house is proposed to remain as part of the recreational improvements. As also set forth above, the applicant requests preliminary and final site plan approval to allow the construction of the recreational improvements.

3. **Findings as to Preliminary and Final Site Plan Review for the Proposed Recreational Improvements.** The Board's findings as to preliminary and final site plan review for the proposed recreational improvements are as follows:

a. **Compliance with Ordinance Provisions.** Provided that the conditions set forth below are imposed and complied with, the Board finds that the application and the site plans will comply with all applicable zoning ordinance regulations and all applicable site plan ordinance requirements. The Board specifically finds that the application does not require any variance or exception relief so is an "as of right" application.

b. **Compliance with Matters Vital to Public Health.** Provided that the conditions set forth below are imposed and complied with, the Board finds that all 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 recreational improvements.

B. LEGAL CONCLUSIONS

1. **Preliminary and Final Site Plan Review.** The Board's conclusions as to preliminary and final site plan review are as follows:

a. **Standards for Preliminary and Final Site Plan Review.** N.J.S.A. 40:55D-46b and 50a govern the Board's consideration of the preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that the Board "shall" grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the

standards of all applicable ordinances and the conditions of preliminary approval. As such, 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 two exceptions: (1) The first exception is where an application does not comply with all ordinance provisions 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 provisions and grant approval if the application complies with all such remaining provisions. (2) The second exception is where the application does not comply with all ordinance provisions 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 or plan is 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 application or plan to comply with the ordinance provisions prior to the Board granting approval. While N.J.S.A. 40:55D-46a allows the site plan and engineering documents required to be submitted to be in “tentative form for discussion purposes for preliminary approval,” the Board cannot grant preliminary approval subject to later submission of additional information which is fundamental to an essential element of a development plan. The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. 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). 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. And, the Board cannot grant final approval subject to later submission of the required detailed drawings and specifications because they are required to be submitted ahead of time pursuant to N.J.S.A. 40:55D-50a. See also, N.J.S.A. 40:55D-4 which defines “final approval” as the action of the Board taken “after all conditions, engineering plans and other requirements of have been completed or fulfilled”

b. **Conclusions to Grant Preliminary and Final Site Plan**

Approval. As set forth above in the factual findings, provided that the conditions set forth below are imposed and complied with, the Board found that the application and site plans will comply with all applicable zoning ordinance regulations and all applicable site plan ordinance requirements. As such, the Board further concludes that preliminary and final site plan approval of the proposed recreational improvements can and should be granted, subject to the conditions set forth below being imposed and complied with.

2. **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. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-

565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). 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 the neighboring residential properties). 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). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition 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 NOVEMBER 17, 2020 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE CONDITIONS SET FORTH BELOW:

C. RELIEF GRANTED

1. **Grant of Preliminary and Final Site Plan Approval.** Subject to the conditions set forth below, the Board hereby grants preliminary and final site plan approval for the recreational improvements.

D. CONDITIONS

1. **Revisions to Site Plans.** Revisions to the site plans shall be made by notes and/or drawings to the satisfaction of the Township Planner and Board engineering expert by April 19, 2022 (which is within six (6) months of the adoption of the within resolution on October 19, 2021) to incorporate the comments emanating in the following letters and/or memos prepared by the following Board and/or Township professionals and/or as discussed by the Board on the record during the hearing on the application provided below. In the event that the applicant fails to make the revisions as required and/or fails to obtain signatures on the site plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void.

a. **Comments in the memo to the Board from David Schley, PP, AICP, Township Planner, dated October 28, 2020:**

(Intentionally omitted unless included herein below)

(8) The Area Map on sheet WP-1 shall be revised to reflect that Lot 44 is in the B-5 Zone.

(9) Note 4 on sheet WP-2 shall be revised to reflect that the transition area waiver for redevelopment was issued for lots 39 and 43.

(10) Revise the plans to clarify what appears to be an unlabeled sidewalk between the restroom building on Lot 33 and the daycare building on Lot 43.

(11) The existing conservation easement on Lot 44 shall be amended to reflect the current wetlands and wetlands transition area boundaries as approved by NJDEP, and the amended easement boundary shall be delineated with Township standard markers or signs. Prior to establishing the easement, the applicant shall clarify the width of the wetlands transition area. The submitted plans show a 50' wide transition area as specified in the permit (GP17) issued by NJDEP for Lot 44 on January 28, 2020. The permit (transition area waiver for redevelopment) issued by NJDEP for lots 39 and 43 on April 3, 2019 specifies a 150' wide transition area.

b. **Comments in the email correspondence to the Board from Ann Parsekian (Chairperson, Environmental Commission) dated October 27, 2020 to the site plans:**

(1) Add a note to the site plans stating that the path on Lot 44 shall be accessible to the public.

2. **Design, Construction and Location of Improvements.** The applicant shall be required to design, construct and locate the proposed recreational improvements in substantial conformity with the site plans referenced above after they have been revised in accordance with condition #1 above.

3. **Conditions of 2019 Approvals.** All conditions of the 2019 approvals shall remain in full force and effect unless specifically altered by the within conditions.
4. **NJDEP Flood Hazard Area Control Act.** The applicant shall demonstrate compliance with the NJDEP Flood Hazard Area Control Act.
5. **Merger.** Lots 39 and 44 shall be merged into a single lot and the single lot shall be designated as Lot 39.01 unless the Tax Assessor wants the single lot to have a different designation.
6. **Path Connection.** The connection of the path on Lot 44 to the existing trail on adjoining Township owned Lot 5.01 shall be coordinated with and shall be subject to approval by the Township Engineer.
7. **Path Construction and Maintenance of Path and Field.** The path shall be constructed of untreated mulch or wood chip material, which shall be subject to approval by the Township Planner, and the applicant shall be responsible for the perpetual maintenance of the path. The areas immediately adjacent to the path and benches shall be mowed on a regular basis, and the field shall be mowed at least twice during the growing season.
8. **Athletic Facilities.** If the applicant gets an indication from the tenants in the residential buildings on Lot 39 that there would be a demand for temporary athletic structures such as soccer goals, the applicant shall provide same on the property.
9. **Use of Existing Building on Lot 44.** The applicant shall use the existing building on Lot 44 for storage and shall be responsible for maintaining the building.
10. **Grant of Easement to Township.** The applicant shall grant to the Township an easement over Lot 39 and Lot 44 to provide a public access link between King George Road and the wooded Township open space to the west (Lot 5.01).
11. **Submission of Digital Plans.** The applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department.
12. **Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy.** The applicant shall apply for and obtain a construction permit by October 19, 2023, which is within two years of the adoption of the Board's resolution on October 19, 2021. If during said two-year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The applicant shall also have one year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall automatically expire and become null and void.
13. **Easements, Dedications and Conveyances, Including Wetlands**

Conservation Easement and Stormwater Easement. The applicant shall record an amendment to the Declaration of Covenants and Restrictions recorded in 2000 and the Easement Agreement (utility, parking and access easement) recorded in 2002, if deemed necessary by and to the satisfaction of the Township Attorney. These documents shall reflect the terms of the within approval, including specifically that the recreational facilities on Lot 44 shall be available for use by all residents of the buildings on Lot 39 as well as for use by all residents of the Crown Court development, as set forth in condition 8 of the Board's March 5, 2010 resolution granting site plan approval to Crown Court Associates. Any and all easements, dedications and/or conveyances which are proposed on the site plans and/or required by the within conditions shall, in addition to being identified on the site plans, be contained in separate documents, if required, satisfactory to the Township Attorney and Township Engineer. The documents shall be prepared by the Township Attorney or the applicant's attorney, at the discretion of the Township Attorney. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description and a map of the easement, dedication and/or conveyance area. All such documents shall be recorded prior to issuance of any permits and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township. All documents shall be subject to review and approval by the Township Engineer and Township attorney and must be executed by the applicant and recorded with the Somerset County Clerk prior to issuance of a certificate of occupancy for either apartment building on Lot 39 (Building A or Building B).

14. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 10 days of the adoption of a resolution, within 10 days of written notice that a deficiency exists in the escrow account, prior to signing the site plans, prior to the issuance of any permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition after receiving written notice and a 5-day period in which to cure the deficiency shall result in the relief granted terminating and becoming null and void. All written notices shall be sent to the applicant directly. The Township may elect to send a courtesy copy to the applicant's attorney but any such courtesy copy shall have no legal effect.

15. **Specific 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:

- a. Township Board of Health;
- b. Somerset County Department of Health;
- c. Bernards Township Sewerage Authority;
- d. Somerset - Union Soil Conservation District certification / approval including as to the 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.

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

VOTE ON MOTION DULY MADE AND SECONDED ON NOVEMBER 17, 2020:

THOSE IN FAVOR: ASAY, ESPOSITO, HURLEY, HARRIS, MCNALLY, MANDUKE, MASTRANGELO & PIEDICI.

THOSE OPPOSED: DAMURJIAN.

The above memorializing resolution was adopted on October 19, 2021 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
ASAY				X
ESPOSITO			(No longer a member)	
HURLEY			(No longer a member)	
HARRIS			(No longer a member)	
MCNALLY	X			
MANDUKE	X			
MASTRANGELO	X			
PIEDICI	X			

2021-10-19-v5

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 October 19, 2021.



CYNDI KIEFER, Board Secretary

BERNARDS TOWNSHIP PLANNING BOARD

**WILLIAM AND CAROL MOYE
BLOCK 11401, LOT 11
11 MOUNTAIN ROAD**

APPLICATION NO. PB-17-001

**RESOLUTION MEMORIALIZING GRANT OF “C(2)” VARIANCE AS TO LOT YIELD
AND MINOR SUBDIVISION APPROVAL**

WHEREAS, William and Carol Moye (the "**applicant**") is the owner of an approximately 5.9-acre property located in the Township of Bernards (the "**Township**") which has an address of 11 Mountain Road and is designated on the Township tax maps as Block 11401, Lot 11 (the "**property**"), and the property is situated in the R-3 residential zoning district (the "**R-3 zone**") on the northwest corner of Mountain Road and Martinsville Road, and the property is developed with an existing single family dwelling and accessory improvements (the "**existing improvements**");

WHEREAS, the applicant submitted an application (the "**application**") to the Bernards Township Planning Board (the "**Board**") seeking a "c(2)" variance and minor subdivision approval to allow the subdivision of the property into two parcels (the "**proposed subdivision**"), a 2.70 acre lot on which the existing improvements would be located, and a 3.19 acre lot on which a proposed dwelling and associated improvements would be located (the "**proposed improvements**");

WHEREAS, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:455D-47, -60 and -70c;

WHEREAS, a number of documents were submitted with regard to the application by the applicant, as well as by the Board's and Township's experts and officials, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, 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. Plan set, titled "Minor Subdivision – Lot 11, Block 11401 -11 Mountain Road", prepared by Stephen E. Parker, PE of Parker Engineering & Surveying, PC, dated November 16, 2016, last revised November 5, 2020, consisting of four sheets (the "**subdivision plans**");

WHEREAS, the Board held a public hearing on the application commencing on February 4, 2020, continuing on June 2, 2020, and concluding on December 8, 2020 during which hearing the applicant appeared pro se and the Board was represented by Jonathan E. Drill, Esq.;

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

1. Carol Moye (applicant),
2. William Moye (applicant),
3. Steve Parker, PE (applicant's engineering expert),
4. David Schley, PP, AICP (Township planner), and
5. David Banisch, PP, AICP (Board planning expert);

WHEREAS, no exhibits were entered into the record;

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

A. FACTUAL FINDINGS

1. **The Property, Surrounding Area and Zoning.** The property is an approximately 400 feet by 650 feet generally rectangular shaped lot situated on the northwest corner of Mountain Road and Martinsville Road, consisting of approximately 5.89-acres and situated in the R-3 zone. Mountain Park is located across Mountain Road from the property to the south, and Warren Township is located across Martinsville Road from the property to the east. The existing improvements are located on the northerly portion of the property with driveway access to Martinsville Road. The southerly portion of the property is predominately open field, much of which consists of wetlands and wetlands transition areas. The property is situated in the R-3 zone which allows residential development pursuant to ordinance section 21-10.4.a.

2. **The Proposed Subdivision and Requested "C(2)" Maximum Lot Yield Variance.** As set forth above, the proposed subdivision would subdivide the property to create two lots, a 2.70-acre lot on which the existing improvements would be located, and a 3.19-acre lot on which the proposed improvements would be located, consisting of the proposed dwelling and associated improvements. The property contains 2.77 acres of wetlands and wetlands transition areas, leaving 3.123 areas of unconstrained land. During the course of the hearings on the application, the applicant revised certain details of the proposed subdivision to relocate the proposed dwelling closer to the street intersection, with a larger dwelling footprint and greater usable rear yard space between the proposed dwelling and the proposed wetlands boundary / conservation easement that also is proposed to be located on the property. In connection with the proposed subdivision, the applicant has requested a "c(2)" variance from ordinance section 21-10.4b / Table 401-A, which permits a maximum lot yield of one lot on the property. Because the unconstrained area of the property is only 3.123 acres, and the minimum

required lot area in the R-3 zone is two acres, the maximum lot yield on the 3.123 unconstrained acres of the property is one lot, whereas the applicant proposes two lots, thereby triggering the requirement for a “c” lot yield variance.

3. **Findings as to the “C(2)” Maximum Lot Yield Variance.** The Board’s findings as to positive and negative criteria of the requested “c(2)” maximum lot yield variance are as follows.

a. **Findings as to the Positive Criteria of the “C(2)” Maximum Lot Yield Variance.** The Board’s findings as to the positive criteria of the “c(2)” maximum lot yield variance are as follows. First, the Board finds that the deviation has been created as a result of a design which minimizes the fill of wetlands on the property. The Board notes and finds that the applicant could have proposed a design which resulted in greater fill under NJDEP rules, which design would have resulted in the applicant not requiring a maximum lot yield variance relief under the ordinance. As such, the Board finds that granting the proposed variance to allow the proposed subdivision will result in the division of the property in such a manner that preserves wetlands on the property which the Board finds promotes the purposes of zoning set forth in the Municipal Land Use Law (MLUL) as enunciated in: N.J.S.A. 40:55D-2a (promoting the general welfare); -2e (promoting the preservation of the environment); and -2m (encouraging coordination of the various public and private procedures and activities shaping land development to provide a more efficient use of the land). Further, the Board finds that these zoning benefits are community wide benefits and not simply a private benefit to the applicant. Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the “c(2)” variance will substantially outweigh any detriment.

b. **Findings as to the Negative Criteria of the “C(2)” Maximum Lot Yield Variance.** The Board’s findings as to the negative criteria of the “c(2)” maximum lot yield variance are as follows. As to the first prong of the negative criteria, the Board finds that there will be no negative aesthetic impacts resulting from exceeding the maximum permitted lot yield because, from a visual perspective, the property does not appear to be less than 5.9-acres in size which complies with the minimum lot size requirement for the R-3 zone and the property after subdivision as well as the existing and proposed dwellings will not appear overcrowded or overdeveloped from a visual standpoint. As to the second prong of the negative criteria, the Board finds that the grant of the variance will not impair the intent or purpose of the master plan and zoning ordinance because the proposed design conserves wetlands areas and provides a more environmentally sound means of dividing the property and ultimately developing same with the proposed dwelling. For the foregoing reasons, and provided that the conditions set forth below are imposed and complied with, the Board finds that the “c(2)” maximum lot yield variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance.

4. **Findings as to Minor Subdivision Review.** The Board’s findings as to minor subdivision review and approval are as follows. With the exception of the variance that the Board has determined can and should be granted, the Board finds that the subdivision plans will comply with all other applicable zoning ordinance regulations and all subdivision ordinance requirements, provided that the conditions set forth below are imposed and complied with. This

includes the Board being satisfied as to the level of detail of the subdivision plans. The Board finds that approval of the subdivision plans, subject to the revisions required below being made, is appropriate in this particular application because, as revised, the subdivision plans will comply with all applicable ordinance regulations and requirements (other than from the ordinance provision from which the Board has determined that a variance can and should be granted). For the foregoing reasons, the Board's ultimate finding is that minor subdivision approval is warranted provided that the conditions set forth below are imposed and complied with.

B. CONCLUSIONS OF LAW

1. **Conclusions as to the "C(2)" Maximum Lot Yield Variance.** The Board's conclusions as to the "c(2)" maximum lot yield 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. detriments" variances pursuant to N.J.S.A. 40:55D-70c(2) where, in an application or appeal relating to a specific piece of property, the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements, and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment. This is the so-called "positive" criteria of a "c(2)" variance. The zoning benefits resulting from permitting the deviation(s) must be public benefits ("improved zoning and planning that will benefit the community") and not merely benefits for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1, 9 (App. Div. 1996). Finally, while "c(1)" hardship variances are not available for self-created situations and/or for mistakes, an intentionally created situation or mistake does not serve to bar a "c(2)" variance because the focus of a "c(2)" variance is not on hardship but, rather, on advancing the purposes of zoning. Ketcherick v. Mountain Lakes Board of Adj., 256 N.J. Super. 647, 656-657 (App. Div. 1992); Green Meadows v. Montville Planning Board, 329 N.J. Super. 12, 22 (App. Div. 2000). Even if an applicant proves the "positive" criteria of a "c(2)" variance, the Board may not exercise its power to grant the variance unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70, "no variance or other relief ... may be granted ... unless such variance or other relief ... can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means the Town "master plan." Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Grant of the "C(2)" Variance.** As set forth in the factual findings above, the Board found that granting the "c(2)" maximum lot yield variance would advance the purposes of the MLUL provided that the conditions set forth below are imposed and complied with. The Board further found that the zoning benefits were community wide, and not solely for the benefit of the applicant. The Board also found that the benefits of the deviation would substantially outweigh any detriments provided, again, that the conditions set forth below are imposed and complied with. Finally, provided that the conditions set forth below are imposed

and complied with, the Board found that the grant of the “c(2)” variance would not result in substantial detriment to the public good or substantial impairment of the intent or purpose of the master plan or zoning ordinance. As such, the Board concludes that it can and should grant the “c(2)” variance at issue subject to the conditions set forth below.

2. **Minor Subdivision Review.** The Board’s conclusions as to minor subdivision review are as follows:

a. **Standards Applicable to Minor Subdivision Review.**

N.J.S.A. 40:55D-47 is the starting point for consideration of a minor subdivision application and provides that “minor subdivision approval shall be deemed to be final approval of the subdivision.” N.J.S.A. 40:55D-50a is thus the focal point for consideration of the minor subdivision as it provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, 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 two exceptions: The first exception is where an application does not comply with all ordinance provisions 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 provisions and grant approval if the application complies with all such remaining provisions. The second exception is where the application does not comply with all ordinance provisions 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 or plan 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 application or plan prior to the Board granting approval. However, the Board cannot grant approval subject to later submission of additional information which is fundamental to an essential element of a development plan. The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. 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). 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 subdivision review process, approval must be denied. Id.

b. **Grant of Minor Subdivision Approval.** As set forth above in the factual findings, since the variance requested was granted and provided that the conditions set forth below are imposed and complied with, the Board found that the application and subdivision plans will comply with all remaining applicable zoning ordinance regulations and all applicable subdivision ordinance requirements. As set forth above, this includes the Board being satisfied as to the level of detail of the subdivision plans. As the Board has concluded that the variance can and should be granted, the Board further concludes that minor subdivision approval can and should be granted, subject to the conditions set forth below being imposed and complied with.

3. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition approval on review and approval of changes to the plans by Board’s experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The Board concludes that the conditions set forth below are warranted and should be imposed on all of the above-mentioned bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON DECEMBER 8, 2020, THAT THE APPLICATION IS GRANTED, SUBJECT TO CONDITIONS AS FOLLOWS:

C. RELIEF GRANTED

1. **Grant of “C(2)” Maximum Lot Yield Variance.** Subject to the conditions set forth below being imposed and complied with, the Board hereby grants a “c(2)” variance from ordinance section 21-10.4.b / Table 401-A to allow a lot yield of two lots where one lot is permitted based on the usable/unconstrained acreage of the property.

2. **Grant of Minor Subdivision Approval.** Subject to the conditions set forth below being imposed and complied with, the Board hereby grants minor subdivision approval for the subdivision plans to allow the division of the property into two lots as proposed.

D. CONDITIONS

1. **Revisions to the Subdivision Plans.** Revisions to the subdivision plans 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 subdivision plans signed by the Board Chair and Secretary by April 19, 2022 (which is six months from the date the within resolution was adopted on October 19, 2021). In the event that the applicant fails to revise the subdivision plans as required by the within condition and/or fails to obtain signatures on the subdivision 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 subdivision plans 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 subdivision plans 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 from reports submitted by Board and Township experts prior to the hearing and/or Board member comments made during the hearing:**

(1) Revise the subdivision plans, including the zoning schedule and building setback lines, to show the proposed dwelling is required to be located with a front yard setback of 100-103 feet from Martinsville Road.

(2) Revise the subdivision plans, including the zoning schedule and building setback lines, to show the proposed dwelling is required to be located with a front yard setback of 120-140 feet from Mountain Road.

(3) Revise the subdivision plans to include a note that the applicant shall maintain hedgerows along the two roads.

(4) Revise the subdivision plans to show a 30-foot wide scenic corridor conservation easement along both roads.

(5) Add a note to the subdivision plans that all utilities shall avoid the hedgerows.

(6) Add a note to the subdivision plans that the proposed stormwater management design shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit.

2. **Limit on Fill.** The proposed 10,126 square feet wetland fill as shown on the plans shall be the limit of wetland fill for the property as proposed.

3. **Compliance with Master Plan Setback Recommendations.** The applicant shall comply with Land Use Plan of the 2010 Township Master Plan recommendations as to “scenic corridor” setbacks for new construction within the CR-1 Conservation Residential District. Specifically, the proposed dwelling shall have front yard setbacks of 100-103 feet from Martinsville Road and 120-140 feet from Mountain Road.

4. **Scenic Corridor Conservation Easement.** A 30-foot wide scenic corridor conservation easement shall be established along the frontages of Martinsville Road and Mountain Road, with gaps in the easement to accommodate the existing and proposed driveways. The easement shall primarily provide for preservation of the existing hedgerow, including trees and understory vegetation. The easement shall permit water line and other utility connections in accordance with the conditions set forth herein, and shall also permit continued maintenance of existing lawn areas, planting of supplemental landscaping, and selective replacement of existing vegetation, subject to approval by the Township Engineer. The scenic corridor conservation easement shall not overlap the proposed wetlands conservation easement or reserve septic system easement.

5. **Field Location of Design Elements.** To ensure impacts to the existing streetscape will be minimized, the proposed driveway, water line and other utility connections shall be field located and subject to further review and approval by the Township Planner and Township Engineer prior to any land disturbance.

6. **Driveway Location.** The proposed driveway location shall be subject to further review and approval by the Township Engineer, prior to any land disturbance, to ensure adequate sight distances along Mountain Road.

7. **Septic Field Design.** If the proposed septic field on Lot 11.02 will be raised above the existing ground level, supplemental landscaping buffering shall be provided to the extent necessary to adequately screen the septic field from Mountain Road and Martinsville Road, and such supplemental landscaping buffering shall be to the satisfaction of the Township Planner.

8. **Deed Restriction.** There shall be a deed restriction recorded on both of the lots which shall include notification of the stormwater management requirements for a major development. The purpose of this deed restriction is to notify any potential developer of the property that, based on the amount of land disturbance and new impervious surface shown on the subdivision plans, the proposed improvements are classified as a “minor development,” requiring stormwater infiltration measures as conceptually shown on the plans. In the event a developer chooses to increase the amount of land disturbance or new impervious surface, to the extent that the proposed improvements would be classified as a “major development,” a more comprehensive stormwater management design would be required.

9. **Wetlands Conservation Easement Marker Review.** The locations of the proposed wetlands conservation easement boundary markers shall be subject to further review and approval by the Township Engineering Department (the quantity of markers shown on the plans is adequate but some markers must be relocated). The markers on Lot 11.01 must be installed prior to recording of the subdivision map or deeds. The markers on Lot 11.02 must be bonded prior to issuance of a construction permit and installed prior to issuance of a certificate of occupancy.

10. **Subdivision Document Review.** The proposed subdivision map or deeds shall be subject to review and approval by the Township Engineering Department and the Township Attorney prior to recording with the Somerset County Clerk.

11. **Document Preparation/Recordation.** The proposed wetlands conservation easements, reserve septic system easements, scenic corridor conservation easements, any other required easement, and the proposed Mountain Road right-of-way dedication, shall be prepared by the Township Attorney and must be executed by the applicant and recorded with the Somerset County Clerk prior to or simultaneous with, the recording of the subdivision map or deeds.

12. **Street Addresses for Lots.** The proposed street addresses shown on the subdivision plans for the existing dwelling on Lot 11.01 and for the proposed dwelling on Lot 11.02 shall be subject to review and approval by the Township. The approved addresses must be shown on the subdivision map or deeds prior to recording.

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

14. **Engineering Permit – ROW.** An engineering permit must be obtained from the Township prior to any work within the Mountain Road right-of-way.

15. **Development Fee.** A development fee must be submitted for Lot 11.02 in accordance with Section 21-86 of the Land Development Ordinance.

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

17. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 10 days of the adoption of a resolution, within 10 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, 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). Failure to abide by this condition shall result in the relief granted automatically terminating and becoming null and void.

18. **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 plan and/or subdivision plat and/or required as a condition of the approval resolution shall, in addition to being identified on the applicant's plans, maps and/or plats, 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.

19. **Time to Perfect Subdivision.** In accordance with N.J.S.A. 40:55D-47d, the applicant shall perfect the subdivision by April 7, 2022 (which is within 190 days from October 19, 2021, the date the within resolution is adopted) unless otherwise extended pursuant to N.J.S.A. 40:55D-47f or -47g, in which case the subdivision shall be perfected by the extended date. In the event that the subdivision is not perfected within the time limitations provided, the within approvals shall automatically expire and become null and void.

20. **Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy.** In accordance with Board Rule 2:4-9.8, the applicant shall apply for and obtain a construction permit for the proposed dwelling on lot 11.02 by October 19, 2023 (which is within two years of the adoption of the Board's resolution on October 19, 2021). If during said two-year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The applicant shall also have one year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the within approvals shall automatically expire and become null and void.

21. **Outside Agency Approvals and Permits.** The within approvals shall be conditioned upon the applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

- a. Township Board of Health;
- b. Somerset County Department of Health;
- c. Somerset - Union Soil Conservation District certification / approval;
- d. Somerset County Planning Board approval of any aspect of the proposed development within its jurisdiction, and
- e. NJDEP approval of any aspect of the proposed development within its jurisdiction.

22. **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 DECEMBER 8, 2020:

THOSE IN FAVOR: ASAY, CRANE, DAMURJIAN, HARRIS, HURLEY, MCNALLY, MANDUKE, MASTRANGELO & PIEDICI.

THOSE OPPOSED: NONE.

The within resolution memorializing the Board action in granting the approvals set forth above was adopted on October 19, 2021 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
ASAY				X
CRANE	X			
DAMURJIAN	X			

HARRIS

(No longer a member)

HURLEY

(No longer a member)

MCNALLY

X

MASTRANGELO

X

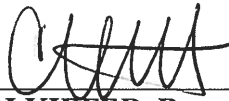
MANDUKE

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 October 19, 2021.



CYNDI KIEFER, Board Secretary

BERNARDS TOWNSHIP PLANNING BOARD

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

APPLICATION #PB17-003B

**RESOLUTION MEMORIALIZING THE GRANT OF THIRD AND FINAL
EXTENSION OF THE FINAL SITE PLAN PROTECTION PERIOD, ADDITIONAL
MODIFICATION TO CONDITION OF PRIOR APPROVALS TO ALLOW
EXTENSION OF TIME PERIOD TO CONSTRUCT PARKING SPACES OR SUBMIT
APPLICATION FOR MODIFIED PARKING LAYOUT, AND ADDITIONAL
EXTENSION OF “C” VARIANCES**

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**”) in 2016 preliminary and final site plan approval and “c(1)” and “c(2)” variances (the “**2016 Approvals**”), as memorialized in a resolution adopted 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**”) and subsequently applied for and obtained from the Board in 2017 amended preliminary and final site plan approval and “c(1)” and “c(2)” variances (the “**2017 Approvals**”), as memorialized in a resolution adopted June 6, 2017 (the “**June 6, 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 interim (temporary) parking spaces that would increase the total parking supply from 298 to 320 spaces, and Phase 2 would include the removal of the interim parking spaces and construction of the proposed permanent parking areas 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 June 6, 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 Approvals 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, N.J.S.A. 40:55D-52(a) provides that the zoning requirements applicable to the preliminary site plan or subdivision approval first granted and all other rights conferred upon the developer, whether conditionally or otherwise, shall not be changed for a period of two years after the date on which the resolution of final approval is adopted and that the planning board may extend such period of protection for extensions of one year but not to exceed three one-year extensions;

WHEREAS, ordinance section 21-4.7.f provides that whenever a proposed development requires site plan, subdivision or conditional use approval, but not a “d” type variance pursuant to ordinance section 21-5.11.d (which references N.J.S.A. 40:55D-70d), the Planning Board is authorized to grant to the same extent and subject to the same restrictions as the Board of Adjustment “c” type variances (see, N.J.S.A. 40:55D-60), and ordinance section 21-5.10 provides that any variance granted by the Board of Adjustment permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have actually been commenced on each and every structure permitted by the variance or unless such use permitted by the variance has actually been commenced within one year from the date of decision by the Board of Adjustment, but the ordinance goes on to provide that if a variance is granted in conjunction with site plan or subdivision approval or conditional use approval, the variance shall expire at the same time as the site plan or subdivision approval or conditional use approval expires;

WHEREAS, the applicant obtained from the Board a modification to Condition #9 of the June 6, 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 (the “**first extensions**”);

WHEREAS, the applicant applied to the Board by letter from its attorney dated April 27, 2021 seeking a modification to Condition #9 of the 2017 resolution to extend 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, to extend the final

site plan protection period provided by N.J.S.A. 40:55D-52 for a final one-year period, from June 6, 2021 to June 6, 2022, and to extend the expiration date of the “c” variances granted in connection with the amended Approvals from June 6, 2021 to June 6, 2022 (the “**second extension application**”);

WHEREAS, the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-20 by virtue of N.J.S.A. 40:55D-52 and -60;

WHEREAS, the Board considered the second extension application at a non-noticed ¹ public hearing on June 8, 2021, during which hearing the applicant was represented by Thomas J. Malman, Esq. (of Day Pitney LLP), and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

WHEREAS, AFTER CONSIDERING THE PRIOR APPROVALS AS WELL AS THE REASONS PROVIDED IN SUPPORT OF THE SECOND EXTENSION 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 Second Extension Application.** As set forth above, the second extension application seeks the following relief: (a) a final one (1) year extension of the final site plan protection period pursuant to N.J.S.A. 40:55D-52 from June 6, 2021 to June 6, 2022; (b) a modification of condition #9 of the June 6, 2017 Resolution to allow for an extension of the time period from June 6, 2021 to June 6, 2022 within which the applicant can commence construction of the permanent parking spaces consistent with the 2016 Approval or submit an application to the Board for a modified parking layout; and (c) an extension of the expiration date of the “c” variances from June 6, 2021 to June 6, 2022.

2. **Standards for Considering the Request for the Extension of the Final Site Plan Protection Period.** In determining whether or not to grant a request for an extension of the preliminary or final site plan protection periods, the Board must engage in a balancing test in which it must consider factors that weigh in favor of the extensions and factors that weigh

¹No notice was required for the hearing on the application because N.J.S.A. 40:55D-12a does not require notice of a hearing on: (1) an extension of an approval for a period of less than five (5) years; and (2) a modification of a condition unless the modification is “significant.” The Board finds and notes that the extension aspect of the application is for a period less than five (5) years. The Board finds that, while the underlying condition is important to ensure that the applicant proceeds diligently with its approvals, modifying the condition to grant an extension of time is not a “significant” condition for purposes of notice where the extension request is for less than a 5-year period. The Board notes that, had the modification aspect of the application sought to eliminate the condition in its entirety, the Board would have found that to be significant and would have required notice.

against the extensions and then balance the factors to determine whether or not to grant the extensions. Jordan Developers v. Brigantine Planning Board, 256 N.J. Super. 676, 679-680 (App. Div. 1992). While upholding the Brigantine Planning Board's denial of the extension request in that case on the basis of an intervening zoning change, the Jordan court held that the intervening zone change did not require denial of the extension but was a factor the board should weigh as against an extension when it balanced the positive and negative factors in determining whether or not to grant the extension. The Jordan court specifically held that the board must weigh "the public interest in the implementation of [any ordinance] change, the applicant's interest in extended protection, and the circumstances in which the need for the extension arose." Id. at 680. The required balancing test is not an "all or nothing" proposition. Certain factors may weigh against granting an extension except that, if conditions are imposed on the extension, the balance may then be tipped in the direction of granting the extension. Conditions may have to be imposed in the event the Board finds that same are necessary in order to strike the proper balance. Finally, while an approval cannot be granted on the basis of financial hardship, see, Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005) ("personal hardship" of the owner, financial or otherwise, is not a basis to grant a "c" variance), the inability to proceed with a proposed development for financial or other reasons can be a valid factor to consider in determining whether to extend the protection period.

3. **Factors Weigh in Favor of Granting the Additional Extension of the Final Site Plan Protection Period.** Turning to the issue of whether there are any factors that weigh in favor of extending the final site plan protection period, the Board finds as follows. First, the Board recognizes that the applicant has been diligently proceeding to construct the work contemplated under the prior approvals and has completed construction of the administrative office building. The Board finds, however, that the applicant has not only been delayed in completion as a result of the ongoing COVID-19 pandemic, but that the pandemic has influenced potential future utilization of the property. As such, while the Board finds that the applicant has taken significant steps towards completion of the development, it also finds that providing for additional time such that the applicant is provided with flexibility in the process of completion of the development will be beneficial. In that regard, the Board finds that it is beneficial for the applicant to determine its parking needs following the pandemic such that a final and accurate parking design can be accomplished. The Board further finds that the extension of the protection period will not negatively impact or affect the public interest. In this regard, the Board finds that there are no factors that weigh against granting the requested extension. Rather, granting the extension will promote the processing and construction of the development and conserve Board and applicant time in not having to re-hear the certain aspects of the previous applications. The Board finds the factors that weigh in favor of granting the extension substantially outweigh the factors against the extension as there are no negative factors present here.

4. **Standards for Considering the Request for Modification of Condition #9 of the June 6, 2017 Resolution.** Our courts have held that a Board has the power to modify and/or eliminate prior approval conditions upon a "proper showing of changed circumstances", or upon "other good cause" warranting modification and/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 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, and/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. Id.

5. **Good Cause Exists for Additional Modification of Condition #9 of the 2017 Resolution.** Turning to the issue of whether or not to modify Condition #9, the Board finds that good cause exists to grant the request for such a modification. As noted above, the Board recognizes and finds that the applicant has completed construction of many aspects of the development, however, due to the on-going COVID-19 pandemic, the applicant is uncertain as to when it will be able to reoccupy its facilities and whether that occupancy will resemble pre-pandemic occupancy. As such, the applicant is in need of additional time to fully evaluate its parking needs for the campus. As such, the Board finds that allowing the applicant additional time to finalize the details and design of its parking areas based on its needs and the current and future utilization of same would be beneficial. The Board finds that no negative impacts will result from modifying Condition #9 as proposed because the request is to allow the applicant time to determine its accurate parking needs such that its future parking areas can be properly and accurately designed. For all of the foregoing, the Board finds that good cause exists to warrant the grant of the modification of the condition to reflect the time period extension.

6. **Standards for Considering the Request for Extension of the Expiration of the “C” Variances.** As set forth above, ordinance section 21-4.7.f provides that whenever a proposed development requires site plan or subdivision approval or conditional use approval, but not a “d” type variance pursuant to ordinance section 21-5.11.d (which references N.J.S.A. 40:55D-70d), the Planning Board is authorized to grant to the same extent and subject to the same restrictions as the Board of Adjustment “c” type variances (see, N.J.S.A. 40:55D-60), and ordinance section 21-5.10 provides that any variance granted by the Board of Adjustment permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have actually been commenced on each and every structure permitted by the variance or unless such use permitted by the variance has actually been commenced within one year from the date of

decision by the Board of Adjustment, but the ordinance goes on to provide that if a variance is granted in conjunction with site plan or subdivision approval or conditional use approval, the variance shall expire at the same time as the site plan or subdivision approval or conditional use approval expires. As to the standards relevant to the grant of extension requests so as to extend the “life” of an approval, the factors in Jordan Developers v. Brigantine Planning Board, 256 N.J. Super. 676, 679-680 (App. Div. 1992) should be applied along with the law governing the modification of conditions. As set forth above, Jordan held that the Board must engage in a balancing test in which it must consider factors that weigh in favor of an extension and factors that weigh against the extension and then balance the factors to determine whether or not to grant the extension. While upholding the Brigantine Planning Board’s denial of the extension request in that case on the basis of an intervening zoning change, the Jordan court held that the intervening zone change did not require denial of the extension but was a factor the board should weigh as against an extension when it balanced the positive and negative factors in determining whether or not to grant the extension. The Jordan court specifically held that the board must weigh “the public interest in the implementation of [any ordinance] change, the applicant’s interest in extended protection, and the circumstances in which the need for the extension arose.” Id. at 680. The required balancing test is not an “all or nothing” proposition. Certain factors may weigh against granting an extension except that, if conditions are imposed on the extension, the balance may then be tipped in the direction of granting the extension. Conditions may have to be imposed in the event the Board finds that same are necessary in order to strike the proper balance. Finally, while an approval cannot be granted on the basis of financial hardship, see, Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005) (“personal hardship” of the owner, financial or otherwise, is not a basis to grant a “c” variance), the inability to proceed with a proposed development or condition of same for financial or other reasons can be a valid factor to consider in determining whether to extend the life of the approval.

7. **Factors Weigh in Favor of Granting the Additional Extension of the “C” Variances.** Turning to the issue of whether there are any factors that weigh in favor of and/or against extending the expiration date of the “c” variances, the Board finds as follows. As set forth above, the Board finds that the applicant needs time to determine its needs with regard to the parking areas and future utilization of same in light of the ongoing pandemic and its impact on use of the site. The Board recognizes that the pandemic has not only impacted constructed processes, but also utilization of off-site work arrangements. As such, the Board finds it reasonable for the applicant to have additional time to determine the appropriate means for developing the parking lot configurations based on its needs post-pandemic. The Board finds that all of these factors weigh in favor of granting the extension request. The Board further finds that there are no factors that weigh against granting the request, particularly since the time period coincides with the extension of time requested for the protection of final site plan approval. Having considered the factors that weigh in favor of granting the extension request and finding that there are no factors that weigh against granting the extension request, the Board finds and concludes that it should grant the second extension request, thereby extending the expiration period of the “c” variances from June 6, 2021 to June 6, 2022.

NOW, THEREFORE, BE IT RESOLVED BY THE BERNARDS TOWNSHIP PLANNING BOARD, BY MOTION DULY MADE AND SECONDED ON JUNE 8, 2021, AS FOLLOWS:

B. RELIEF GRANTED

1. **Grant of Final One (1) Year Extension of the Final Site Plan Protection Period.** Subject to the conditions set forth below, a final one-year extension of the final site plan protection period as to the 2017 Approvals is granted pursuant to N.J.S.A. 40:55D-52, thereby extending the final site plan protection period from June 6, 2021 to June 6, 2022.
2. **Grant of Additional Modification to Condition #9 of the June 6, 2017 Resolution to Reflect the Grant of the Final Site Plan Protection Period Extension.** Subject to the conditions set forth below, Condition #9 of the June 6, 2017 Resolution is modified to reflect the grant of the final site plan protection period extension so the time within which 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” is hereby extended from June 6, 2021 to June 6, 2022.
3. **Grant of Additional One (1) Year Extension of Expiration Date of “C” Variances.** Subject to the conditions set forth below, the Board grants a one (1) year extension of the expiration date of the “c “variances from June 6, 2021 to June 6, 2022.

C. CONDITIONS

1. **Condition # 9 of the June 6, 2017 Resolution Revised.** Condition # 9 of the June 6, 2017 Resolution is hereby revised to provide as follows:

“9. 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, 2022 (which is the third and final one (1) year extension of the initial time period). During that additional one-year extension time period, the applicant shall be permitted to obtain a certificate of occupancy for the administrative office building.”
2. **Subject to all Conditions of prior Board of Adjustment and Planning Board Approvals which have not been modified herein.** The site and the USGA facility shall remain subject to all conditions of prior Board of Adjustment and Planning Board approvals not specifically eliminated or modified in the within resolution.
3. **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 JUNE 8, 2021:

THOSE IN FAVOR: FIELDS, DAMURJIAN, MANDUKE, MASTRANGELO, BAUMANN & PIEDICI.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on October 19, 2021 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
FIELDS				X
DAMURJIAN	X			
MANDUKE	X			
MASTRANGELO	X			
BAUMANN	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 October 19, 2021.



CYNDI KIEFER, Board Secretary