

TOWNSHIP OF BERNARDS **ZONING BOARD OF ADJUSTMENT**

REGULAR MEETING AGENDA v2

Warren Craft Meeting Room

September 7, 2022

7:30 PM

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

- 1. CALL TO ORDER**
- 2. FLAG SALUTE**
- 3. OPEN PUBLIC MEETING STATEMENT**
- 4. ROLL CALL**
- 5. APPROVAL OF MINUTES**
 - A.** August 3, 2022 – Regular Session
- 6. APPROVAL OF RESOLUTIONS**
 - A.** J. Nan Realty Company, LLC; Block 3603, Lot 1; 18 Columbia Road; ZB18-011C (approved)
 - B.** Blauvelt, Richard S.; Block 1603, Lot 21.01; 20 Lewis Street; ZB07-12A (approved)
 - C.** Jordano Living Trust; Block 8802, Lot 25; 37 St. Nickolas Way; ZB22-011 (approved)
 - D.** Monk, Trevor & Caren; Block 8602, Lot 82; 489 King George Road; ZB22-013 (approved)
 - E.** Kotel, Ira L. & Amy G.; Block 4301, Lot 11; 18 Colts Glen Lane; ZB22-015 (approved)
- 7. COMPLETENESS AND PUBLIC HEARING**
 - A.** [Raustad, Gregory & Katie](#); Block 6301 Lot 4; 211 Stonehouse Rd; Bulk Variances; ZB22-016
 - B.** [Dietrich, Jennifer](#); Block 1616, Lot 8; 33 Manchester Drive; Conditional Use, Bulk Variances; ZB22-007
- 8. PUBLIC HEARING**
 - A.** [New Jersey American Water Co. Inc.](#); Block 1609, Lot 25; East Oak Street (rear); Preliminary/Final Site Plan, Conditional Use Variance, Bulk Variances; ZB22-014
- 9. COMMENTS FROM MEMBERS**
- 10. COMMENTS FROM STAFF**
- 11. ADJOURN**

08/31/2022 dssw

TOWNSHIP OF BERNARDS
2022 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: GREGORY & KATIE RAUSTAD
Address: 211 Stonehouse Rd Basking Ridge, NJ 07920
Phone: (home) _____ (work) _____ (mobile) 610 812 6865
Email (will be used for official notifications): Katie.raustad@gmail.com

2. OWNER (if different from applicant): SAME AS ABOVE
Address: _____
Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: _____
Address: _____
Phone: _____ Email (will be used for official notifications): _____

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):
Name: Lawrence Pranzo Profession: Architect
Address: 2 Wood Stone Rd, Chester NJ 07930
Phone: 908 227 8579 Email (will be used for official notifications): larry-pranzo@prandesignstudios.com

5. PROPERTY INFORMATION: Block(s): 6301 Lot(s): 4 Zone: R-4
Street Address: 211 Stonehouse Rd Total Area (square feet/acres): 0.96 acres / 42,098 S.F.

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

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

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

☒ No [] Yes (if yes, explain) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: Existing 1 story primary residence to be demolished. A new 2 story primary residence to be constructed requiring a variance for lot coverage.

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):
Variance requested for new lot coverage improvements and for existing conditions of minimal lot area and minimal width for R-4 zoning.

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: We LOVE living in Basking Ridge and feel the new home can bring value to the community. We have made design and function sacrifices to minimize the lot coverage variance.

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

APPLICANT(S) SIGN HERE:

I/we, GREGORY RAUSTAD and KATIE RAUSTAD hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): [Signature] and [Signature]

Sworn and subscribed before me, this 13 day of JUNE, 2022

[Signature]
Notary
CYNTHIA KIEFER
Notary Public - New Jersey
Commission #2442187
Expires 01/10/24

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

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

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

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

Signature of owner(s): _____

Sworn and subscribed before me, this _____ day of _____, 20__.

Notary

TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Jennifer Dietrich

Address: 33 Manchester Drive, Basking Ridge, NJ 07920

Phone: (home) _____ (work) _____ (mobile) (908) 419-2410

Email (will be used for official notifications): jend_@msn.com

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

Address: _____

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

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

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

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

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

Name: Stephen E. Parker Profession: P.E.

Address: Parker Engineering & Surveying, 370 E. Main St., Somerville, NJ 08876

Phone: (908) 725-4400 Email (will be used for official notifications): parkeres@aol.com

5. PROPERTY INFORMATION: Block(s): 1616 Lot(s): 8 Zone: R-4

Street Address: 33 Manchester Drive Total Area (square feet/acres): 42,210 sf / 0.969 ac

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

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

Undersized lot (pre-existing condition); deficient front yard setback (Brandeis Court) (pre-existing condition).

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

[☒] No [☐] Yes (if yes, explain and attach copy) _____

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

Please see Addendum.

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

Please see Addendum.

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

Please see Addendum.


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

APPLICANT(S) SIGN HERE:

I/we, Jennifer Dietrich and _____ hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s):  and _____

Sworn and subscribed before me, this 23rd 24th day of March, 2022.


Frederick B. Zelle, Attorney a Law of the State of New Jersey

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

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

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

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

Signature of owner(s): _____

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

Notary

ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION
JENNIFER DIETRICH
33 MANCHESTER DRIVE, BLOCK 1616, LOT 8 (R-4 ZONE)

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

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

This application pertains to a single family residential lot. The Applicant wishes to operate a Personal Trainer's practice in the existing attached garage (which shall be reconfigured in the interior for such purpose). The Applicant is accredited by the American College of Sports Medicine as a Certified Personal Trainer. Her practice operates under the entity Coreform LLC.

10. [Description of Requested Variances or Exceptions]

This is an application for approval of a Home Office with a D-3 Conditional Use Variance as well as bulk variance(s) pertaining to parking. [Note: In the event that the Board disagrees with the Applicant's position that her proposed personal training business falls within the parameters of a Home Office as defined in Ordinance Section 21-12.3b(2), the Applicant will instead seek a D-1 Use Variance.]

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

11. [Arguments in Support of Application]

The Home Office Ordinance, Section 21-12.3b(2), provides, in pertinent part, as follows:

The provisions of this section are intended to apply to the owner-occupied office of physician, surgeon, dentist, attorney at law, architect, artist, real estate broker, scientist, mathematician, engineer, planner ***or person of like profession*** which office is located within the residence of the person who practices such profession. (emphasis added)

The Applicant submits that her personal training business is similar to that of the medical professionals who are expressly included in the ordinance, in that she, like those medical professionals, provides health services to clients on an individualized basis. If the Board agrees, the Applicant will require only a D-3 Conditional Use Variance and related bulk variance(s), due to an inability to comply with the parking component of the Home Office ordinance (Subsection (2) thereof) and Sections 21-22(a)(1)(b) and 21-22.1(b)(2)(a) of the general parking ordinance.

The conditions imposed by the Home Office ordinance are as follows:

1. Such office shall be contained entirely within the residential structure on the premises and shall not exceed 25% of the total floor area of that structure except that in no case shall such office exceed 900 square feet exclusive of parking spaces.
2. Adequate parking spaces shall be provided so that no parking related to the office shall occur on the street. At least one parking space shall be provided for each 200 square feet or fraction thereof of gross floor area unless the applicant can demonstrate that fewer will be required. No parking shall be permitted in the front yard.
3. No more than 150 motor vehicle trip ends per week shall be generated by the home office use, each arrival or departure being considered one trip end.
4. Safe and efficient vehicular and pedestrian circulation, parking and loading in the vicinity shall not be impaired.
5. No more than two office employees shall be present at any one time. Nonresident professionals shall not be permitted to use the office on a regular basis.
6. The hours of normal operation shall be limited to the hours of 8:00 a.m. to 9:00 p.m., Monday through Saturday.
7. The conditional use approval shall terminate with any change in the ownership of the property.

Under Ordinance Sections 21-22.1(a)(1) and 21-22.1(b)(2)(a), a minimum of 3 off street parking spaces are required for a single family residence, no more than one of which may be located in the front yard on a lot 30,000 square feet or more in area. Moreover, the second condition of the Home Office ordinance requires one office related off street parking space for each 200 sf of office space, which space(s) may not be located in the front yard, ***unless the applicant can demonstrate that fewer will be required.***

The Applicant wishes to convert the existing attached garage into a 322 sf personal trainer's office wherein she would operate her personal training practice. Doing so would eliminate garage parking on the subject 42,210 sf property, increasing from 1 to 3 the number of the required 3 off street parking spaces to be located in the front yard. Furthermore, the 2 office related parking spaces would be located in the front yard.

The Applicant's property is a corner lot, fronting on both Manchester Drive and Brandeis Court. The property is therefore encumbered by two front yards under the zoning ordinance, making the limitations upon front yard parking doubly burdensome for the Applicant. Moreover, the portion of the property not deemed a front yard (essentially the northeast rear corner of the property) is not practicable for parking, due to: (a) the topography of that portion; (b) the existing features located on that portion; and (c) the distant proximity of that portion to the proposed office and the main

entrance to the home. Furthermore, the creation of parking spaces in that portion, together with an access drive to the same, would drastically increase the impervious coverage on the property, likely creating a different non-conformity (excess impervious coverage).

The existing parking area, as distinguished from the access driveway, can accommodate 3 vehicles if angled toward the garage. The Applicant anticipates having no more than 2 clients present at one time, often traveling in one vehicle. In that case, there would be sufficient parking spaces for the Applicant's and her husband's vehicles and one (often the only) client's vehicle. If the Board were reluctant to permit use of 1 of the 3 required spaces for clients and/or to permit tandem parking in the driveway, it is respectfully submitted that permitting 1 or 2 vehicles to park on Brandeis Court (a 6 house *cul de sac* street), during business hours would have no detrimental impact upon the neighborhood, the Master Plan or the Zoning Ordinance.

D-3 Conditional Use Variance Standard

The New Jersey Supreme Court has held that “[b]ecause a conditional use is not a prohibited use . . . it need not meet the stringent special reasons standards for a commercial-use variance . . . summarized in Medici v. BPR Co., 107 N.J. 1, 9–18 (1987). Coventry Square, Inc. v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285, 287 (1994). Thus, an applicant seeking a D-3 conditional use variance need not establish that the site is particularly suited for the proposed use, because the use has already been deemed to be appropriate for, and thus permitted in, the zone, albeit subject to certain conditions. See also TSI E. Brunswick, LLC v. Zoning Bd. of Adjustment of Twp. of E. Brunswick, 215 N.J. 26, 39 (2013). Instead, the applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems. Coventry Square, 138 N.J. at 299.

Similarly, a conditional use applicant need not meet the enhanced quality of proofs required to satisfy the negative criteria for a D-1 use variance under Medici, which entails reconciliation of “the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district”. Medici, 107 N.J. at 21. Instead, an applicant seeking a D-3 use variance for non-compliance with conditions pertaining to a conditional use must:

satisfy the board of adjustment that the site proposed for the conditional use, in the context of the applicant's proposed site plan, continues to be an appropriate site for the conditional use notwithstanding the deviations from one or more conditions imposed by the ordinance. That standard of proof will focus both the applicant's and the board's attention on the specific deviation from conditions imposed by the ordinance, and will permit the board to find special reasons to support the variance only if it is persuaded that the non-compliance with conditions does not affect the suitability of the site for the conditional use. Thus, a conditional-use variance applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems.

Coventry Square, 138 N.J. at 298–99. See also TSI E. Brunswick, 215 N.J. at 46.

Bulk Variance Standards

The parking variances requested can be characterized as C-1 variances, based upon the hardship created by the lot having two front yards and by the topography of, and the features existing upon, the portion of the property not deemed a front yard.

The Negative Criteria are also satisfied, as the parking variance(s) can be granted without substantial detriment to the public good and without substantial impairment of the intent and the purpose of the zone plan and zoning ordinance.

Respectfully Submitted,

BISOGNO, LOEFFLER & ZELLEY, LLC

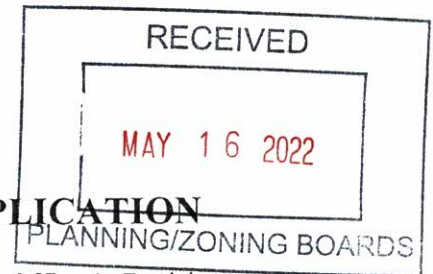
A handwritten signature in blue ink, appearing to read 'F B Zelle', is written over a horizontal line.

By: Frederick B. Zelle, Esq.

Attorneys for the Applicant Jennifer Dietrich

Dated: March 25, 2022

TOWNSHIP OF BERNARDS
2022 ZONING BOARD OF ADJUSTMENT APPLICATION



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

1. APPLICANT: New Jersey American Water Company, Inc.

Address: 1 Water Street, Camden, NJ 08102

Phone: (home) _____ (work) (908) 431-3204 (mobile) _____

Email (will be used for official notifications): richard.conklinjr@amwater.com

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

Address: _____

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

3. ATTORNEY: Archer & Greiner, P.C., Niall J. O'Brien, Esquire

Address: 1025 Laurel Oak Road, Voorhees, NJ 08043

Phone: (856) 616-2696 Email (will be used for official notifications): Nobrien@Archerlaw.com

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

Name: Andrew S. Holt, PE, Suburban Consulting Engineers Profession: Engineer

Address: 96 US Highway 206, Suite 101, Flanders, NJ 07836

Phone: (973) 398-1776 Email (will be used for official notifications): aholt@suburbanconsulting.com

5. PROPERTY INFORMATION: Block(s): 1609 Lot(s): 25 Zone: R-4

Street Address: East Oak Street Rear Total Area (square feet/acres): 61,457 sf/1.411 ac

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

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☐ No ☒ Yes (if yes, explain) _____
Minimum Lot Width, Minimum Front Yard Setback, Minimum Side Yard Setback

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

[x] No [] Yes (if yes, explain) _____

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

The existing property is the location of a Public Utility Facility Booster Station owned and operated by NJ American Water Company.
Existing facilities include small building to house the pumps with associated gravel surfaces, and a temporary emergency generator.
The project proposes the installation of a permanent emergency generator to serve the facility with associated improvements.

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

The current emergency power source is a portable generator.

A permanent generator is being installed to ensure reliable source of emergency supply.

A Variance is requested for a Side Yard Setback of 18.2 feet from the accessory generator when a minimum of 75 feet is required

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

The proposed generator will help in maintaining the reliability of public water supply and, therefore, promotes several purposes of Zoning. The rationale and justification for the requested Variance are set forth in the attached Application Addendum.

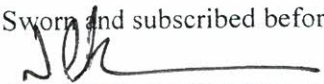
12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

New Jersey American Water Company, Inc.
I/we, By Donald C. Shields, V.P., Engineering and _____ hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s):  and _____

Sworn and subscribed before me, this 30th day of March, 2022.


Notary

**Niall J. O'Brien, Esquire
Attorney at Law
State of New Jersey**

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

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

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

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

Signature of owner(s): _____

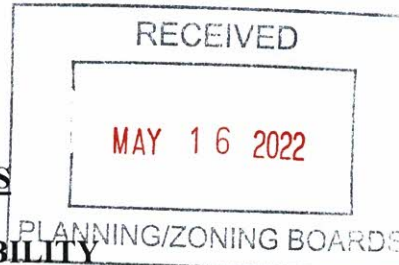
Sworn and subscribed before me, this _____ day of _____, 20__.

Notary

APPLICATION ADDENDUM A
COMPLIANCE WITH CONDITIONAL USE STANDARDS

New Jersey American Water Company, Inc.
BASKING RIDGE BOOSTER STATION GENERATOR RELIABILITY
IMPROVEMENTS

Application for d3 Conditional Use Variance, Conditional Use Approval and
Preliminary and Final Site Plan Approval
Block 1609, Lot 25/Oak Road (Rear), Bernards Township



The existing Public Utility Booster Station and associated facilities are conditionally permitted as a Public Utility Facility. The Applicant's compliance with the Conditional Use Standards applicable to the Conditional Use is set forth below:

§ 21-12.3a. Public Utilities. The provisions of this section are intended to apply to utility installations, including but not limited to power-generating stations, electrical substations, power transmission lines, treatment plants, telephone exchanges and similar facilities, but shall not apply to telephone, gas, water, sewer or electric or community television distribution lines and similar facilities intended to provide direct service to properties when the same are approved by the appropriate Township agency.

1. The proposed use shall have been shown to be reasonably necessary to the convenience of the community.

Compliance: The Basking Ridge Booster Station on the Property already provides significant benefits in providing a necessary increase to the public water pressure and available flow rate along portions of the Applicant's public water distribution system for domestic and commercial use in addition to firefighting and other needs. The emergency generator upgrade will also provide a more reliable source of emergency electric supply for the facility to ensure that the Booster Station remains online and operational during power outages.

2. The lot shall conform to the lot area requirements of the zone in which it is located.

Compliance: The Property is located within the R4 Zoning District and exceeds the minimum lot area requirement of one (1) acre within the R4 Zoning District.

3. All buildings shall meet the yard and height requirements of the zone in which the use is located, or if in a residential zone, the requirements of the E-5 Zone.

Compliance: The existing Booster Station building does not comply with the minimum Lot Width; Front Yard Setback and Side Yard Setbacks for the E-5 Zoning District. The existing facilities meet the maximum permitted height requirements for the E-5 Zoning District. The proposed generator will be located 18.2 feet from that same side lot line when a minimum of 75 feet is required. Variance is requested from this Conditional Use Standard.

4. Adequate provision shall be made for access and off-street parking in accordance with Article V.

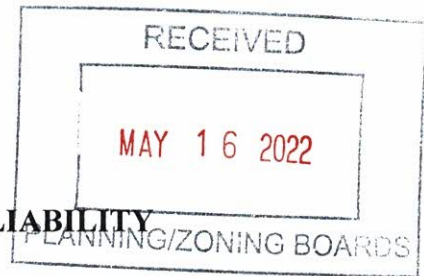
Compliance: The Basking Ridge Booster Station is an unmanned facility and generates minimal site traffic generally limited to approximately once daily visits by the Applicant's personnel for maintenance and inspection other than during necessary repairs or other similar activities. No additional external traffic visits the facility on a regular basis. Because there is no site traffic other than the Applicant's maintenance and service personnel, no off-street parking is proposed or necessary. However, a vehicle turnaround area is provided to ensure parking area is available if needed. Access is provided through an access easement through a shared driveway on the adjacent Bernards Township Sewerage Authority property.

5. Any such building, structure or use shall be designed and arranged and landscaped so as not to detract from the value of adjoining property.

The existing Basking Ridge Booster Station property contains significant natural vegetative buffering and the Booster Station building is secured by a fence and located a significant distance from nearby residences. Additional landscaping is proposed along the property line in the area of the proposed generator. The limited development proposed in connection with this Application should have no impact on, or detract from the value of, adjoining properties.

223980737v1

APPLICATION ADDENDUM B
VARIANCE APPROVALS REQUESTED
New Jersey American Water Company, Inc.
BASKING RIDGE BOOSTER STATION GENERATOR RELIABILITY
IMPROVEMENTS



**Application for d3 Conditional Use Variance, Conditional Use Approval and
Preliminary and Final Site Plan Approval
Block 1609, Lot 25/Oak Road (Rear), Bernards Township**

I. APPLICATION BACKGROUND

This Application on behalf of New Jersey American Water Company, Inc. (the "Applicant") for Conditional Use Variance Approval; Conditional Use Approval; and Preliminary and Final Major Site Plan Approval, provides for the proposed installation of a permanent emergency generator, to service the Applicant's Public Water Utility Booster Station, known as the Basking Ridge Booster, which is located on property that is owned by the Applicant, is 1.411 acres in size, located within a R-4 Zoning District in which Public Utility Facilities are permitted as a Conditional Use, and which is a landlocked parcel to the rear of East Oak Street, adjacent to the Bernards Township Sewerage Authority facility, and more particularly known as Block 1609, Lot 25, on the Official Tax Maps of Bernards Township (the "Property").

Overall, the proposed emergency generator is intended to assure a reliable backup source of power supply in order to ensure the continuing functioning of the Basking Ridge Booster during emergency conditions, which will enhance the reliability of the Applicant's Public Utility water supply.

As shown on the enclosed Site Plans, the existing Booster Station facilities on the Property do not currently conform to the minimum Lot Width, Side Yard and Front Yard Setback requirements within the E-5 Zoning District (which are the applicable bulk criteria for a Public Utility Conditional Use). In addition, in connection with this Application, the Applicant is proposing the installation of the proposed generator within 18.2 feet of the side property line when a minimum Side Yard Setback of 75 feet is required in the E-5 Zoning District by Ordinance, but which would comply with the 15 Foot side yard setback required within the R-4 Zone.

II. VARIANCE APPROVAL REQUESTED

In particular, "d(3)" Variance from Conditional Use Standards applicable to Public Utility Facilities is requested from Conditional Use Standard "3," requiring that "[a]ll buildings shall meet the yard and height requirements of the zone in which the use is located, or if in a residential zone, the requirements of the E-5 Zone." Conditional Use Variance Approval is requested to allow the proposed generator to be located 18.2 feet from the side property line when a minimum Side Yard Setback of 75 feet is required for Accessory Structures. In addition, and if necessary, Variance Approval is requested for (i) the existing Side Yard Setback from the Booster Station building of 36.7 feet when a minimum Side Yard Setback of 75 feet is required in the E-5 Zoning District; (ii) the existing Front Yard Setback of 114 feet when a minimum Front Yard Setback of 175 feet is required within the E-5 Zoning District; and (iii) the existing

Lot Width of 110 feet when a minimum Lot Width of 400 feet is required in the E-5 Zoning District.

III. JUSTIFICATION FOR REQUESTED VARIANCE APPROVALS

1. The Positive Criteria

With respect to “d(3)” Variances from Conditional Use Standards, the New Jersey Supreme Court has held the heightened burden of proving special reasons for Use Variance Approvals should not apply. Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994). Instead, an Applicant, must only justify the municipality’s continued permission for the Conditional Use, and the focus of the positive criteria should be limited to the impact of the deviation, and not to the impact of the use. The Applicant must provide:

Proof...that the site proposed for the conditional use, in the context of the applicant's proposed site plan, continues to be an appropriate site for the conditional use notwithstanding the deviations from one or more conditions imposed by the ordinance. Thus, a conditional-use variance applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems.

Coventry Square, 138 N.J. at 298-99. In other words, the Zoning Board must only determine that the Property continues to be an appropriate location for the Conditional Use, in spite of the Applicant’s inability to comply with the Ordinance Conditional Use Standards.

The Property and the Booster Station is, and must be, located in a location along the Applicant’s Public Utility water distribution system where it can serve its intended purpose of increasing water pressure and, thereby, help in maintaining the reliability of water supply and adequate water pressure and available flow for firefighting and other needs. Thus, in being located on the Property, the Booster Station provides significant local and regional benefits notwithstanding the proposed and existing nonconforming Side Yard Setback and other nonconforming conditions. In that manner, the impact of the use should be deemed positive. Further, because the Booster Station occupies a relatively small footprint, and needs significantly less associated site amenities than other more intensive Public Utility facilities, the Property has historically accommodated, and will continue to accommodate the Booster Station Public Utility Use notwithstanding the existing nonconforming conditions and proposed nonconforming Side Yard Setback.

Further, the Conditional Use Standards related to Yard Setbacks, and other zoning criteria should be considered more applicable to such Public Utility facilities that are more intensive and require associated onsite amenities including, for example, parking and storage areas, and visitor accommodations. Such facilities might include, for example, an office, operations center, or similar facilities that could be expected to conform to the Ordinance Conditional Use Standard applicable to zoning criteria, and are unlike a stand-alone Booster Station that is an unmanned facility, generates minimal site traffic, requires no storage and no visitor accommodation.

The present configuration and use of the Property may have been established prior to the Ordinance Conditional Use Standards related to zoning criteria and, was historically, and continues to be intended for Public Utility use to serve the surrounding community. In fact, the Booster Station is located immediately adjacent to, and has shared access with a Bernards Township Sewerage Authority facility. The existing nonconforming bulk zoning conditions should be deemed to be preexisting nonconforming conditions associated with the Public Utility use and cannot readily be remedied.

Additionally, because the Water Booster Station must, by necessity, be located along the water distribution system in a location where it can serve its intended purpose, and cannot easily be relocated, the Property remains the most appropriate location available.

Finally, the overall upgrades to the Applicant's Public Utility infrastructure within the Township and adjoining municipalities are intended to also address changes in the supply of water to the Applicant for distribution to residents and other customers, and should be considered to promote the public good in the nature of an Inherently Beneficial Use. The Property also can adequately accommodate, and is particularly suited for the Public Utility use. Thus, even if the heightened burden applicable to a "d1" Variance were applicable, the proposed Booster Station would satisfy that standard.

2. The Negative Criteria

For all "d" Variances, the MLUL provides that "no variance or other relief may be granted under the terms of this section...without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance..." N.J.S.A. 40:55D-70(d).

However, in Coventry Square, the Supreme Court also limited the consideration of the negative criteria, providing that this standard is met for Conditional Use Variances as follows:

In respect of the first prong of the negative criteria, that the variance can be granted "without substantial detriment to the public good," N.J.S.A. 40:55D-70, the focus is on the effect on surrounding properties of the grant of the variance for the specific deviations from the conditions imposed by the ordinance. The board of adjustment must evaluate the impact of the proposed [conditional-] use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute "substantial detriment to the public good." ... In respect of the second prong, that the variance will not "substantially impair the intent and purpose of the zone plan and zoning ordinance," N.J.S.A. 40:55D-70(d), the board of adjustment must be satisfied that the grant of the conditional-use variance for the specific project at the designated site is reconcilable with the municipality's legislative determination that the condition should be imposed on all conditional uses in that zoning district.

The Zoning Board's grant of "d3" Conditional Use Variance Approval will not cause such damage to the character of the neighborhood as to constitute substantial detriment to the public good, because the existing Booster Station is a relatively low intensity use for the Property. The reduced Side Yard Setback for the generator should have little or no impact on adjoining properties, especially in light of the fact that the Side Yard is already nonconforming. Further, the emergency generator will have sound attenuation and will comply with NJDEP noise standards. Finally, additional landscaping being proposed to buffer the proposed generator. Therefore, the Property can continue to adequately accommodate the Booster Station without substantial detriment to surrounding properties notwithstanding the further encroachment within the required Side Yard Setback.

In addition, the proposed emergency generator will replace the potential for use of portable generators, thereby significantly reducing generator noise, and the reliable source of emergency supply will help the Booster Station to continue to maintain water pressure during power outages. Therefore, the proposed generator will help to maintain the reliability of water supply and adequate water pressure and available flow for firefighting and other needs within Bernards Township and the surrounding area, and the development should be considered to promote, rather than be a detriment to the public good, including the surrounding properties, thereby satisfying the first prong of the negative criteria applicable to the Variance from Conditional Use Standards.

The grant of the requested Variances from the Conditional Use Standard for the specific project, at the Property, is also reconcilable with legislative determination made by Bernards Township Committee that the Conditional Use Standards should be imposed on all Public Utility Uses within the R-4 Zoning District.

The Applicant must locate the Booster Station in a location along its existing water distribution mains extending through Bernards Township and surrounding areas where it can serve its intended purpose and the Applicant is very limited in its choice of those locations.

Further, the Booster Station is already located on the Property adjacent to the Bernards Sewerage Authority Property and other mixed uses and, therefore, is not out of character with the surrounding properties. In addition, the Property and surrounding properties also contain significant vegetative buffering which will continue to buffer the visibility of the Water Booster Station notwithstanding the existing nonconforming Side Yard Setback.

In addition, due to the fact that the Booster Station will be an unmanned facility which, in order to serve its purpose, must be located within the general area along the Applicant's distribution system, the intent and purpose of the Conditional Use Standards requiring compliance with the certain bulk requirements within the R-4 Zoning District remain applicable and relevant to any new Public Utility Use to be developed within the R-4 Zone.

For all of these reasons, granting the requested Conditional Use Variance Approval is reconcilable with the Bernards Township Committee's determination that the relevant Conditional Standards should be applicable to Public Utility Uses within the R-4 Zone, thereby satisfying the negative criteria for the requested Conditional Use Variance Approval.