

TOWNSHIP OF BERNARDS **ZONING BOARD OF ADJUSTMENT**

REGULAR MEETING AGENDA

Warren Craft Meeting Room

April 3, 2024

7:30 PM

This meeting will be held in person in the Warren Craft Meeting Room. 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.** March 6, 2024 – Regular
 - B.** March 14, 2024 - Special
- 6. APPROVAL OF RESOLUTIONS**
 - A.** Kane, Eric & Danielle; Block 501, Lot 8; 262 Childs Road; ZB23-024 (approved)
 - B.** Ackerman, Scott J. & Emily K.; Block 6902, Lot 11; 6 Archgate Road; ZB23-027 (approved)
 - C.** Dyszler, M./Adam, S.; Block 7301 Lot 51; 50 Liberty Corner Road; ZB23-019 (approved)
 - D.** Kecici, Erol & Kathie; Block 7201 Lots 30-31; 99-111 Mine Brook Road; ZB24-001 (approved)
- 7. COMPLETENESS AND PUBLIC HEARING**
 - A.** [Phili 120 LLC](#); Block 8501 Lot 35; 437 King George Road; Bulk Variances; ZB24-002
 - B.** [Patel, G./Joshi, P.](#); Block 7702, Lot 10.05; 3 Fenwick Place; Bulk Variances; ZB24-005
 - C.** [Mejia, S./Kennedy, S.](#); Block 3901 Lot 66; 16 Autumn Drive; Bulk Variance; ZB24-007
 - D.** [Riverwalk Village LLC](#); Block 11202, Lot 10; 665 Martinsville Road; Conditional Use Variance; ZB24-006
- 8. COMMENTS FROM MEMBERS**
- 9. COMMENTS FROM STAFF**
- 10. ADJOURN**

03/26/2024 dssw

TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Phili120 LLC

Address: 378 Bergen Blvd. Suite 206, Fairview, New Jersey 07022

Phone: (home) 201-874-7520 (work) _____ (mobile) _____

Email (will be used for official notifications): _____

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

Address: _____

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

3. ATTORNEY: Frederick B. Zelley / Post Polak, P.A.

Address: 53 Division Avenue, First Floor, P.O. Box 324, Millington, New Jersey 07946

Phone: (908) 647-6001 Email (will be used for official notifications): fzelley@postpolak.com

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

Name: Page-Mueller Engineering Consultants PC Profession: Engineer

Address: PO Box 4619

Phone: 732-805-3979 Email (will be used for official notifications): cmueller@pagemuellereng.com

5. PROPERTY INFORMATION: Block(s): 8501 Lot(s): 35 Zone: R-5

Street Address: 437 King George Road Total Area (square feet/acres): 20,400

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) _____

Please see addendum

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.):

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

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

Please see Addendum

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

APPLICANT(S) SIGN HERE:

I/we, Nilton De Oliveira for Phil120 LLC 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 22nd day of December, 2023.

Frederick B. Zelley
Frederick B. Zelley, Attorney at Law of the State of New Jersey

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

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

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

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

Signature of owner(s): _____

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

Notary

ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION
PHILI120 LLC
437 KING GEORGE ROAD, BERNARDS TOWNSHIP, BLOCK 8501, LOT 35

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

4. [Additional Professionals]

Christopher James Zehnder, Reg. Architect
Zen Architecture & Engineering
215 Jefferson Avenue
Elizabeth, New Jersey 07201
Telephone: (908) 965-1900
Facsimile: (908) 965-1977
chris@zen-architecture.com

7. (a) Minimum Lot Area of 0.47 acres where 1 acre is required (existing condition);
- (b) Minimum Improvable Lot Area 2,600 sf where 10,000 sf is required (existing condition);
- (c) Minimum Lot Width of 102' where 200' is required (existing condition);
- (d) Minimum Side Yard of 16.1' where 20' is required (existing condition);
- (e) Maximum Lot Coverage of 23.50% where 15% is permitted (existing condition is 15.68%);
- (f) Minimum Front Yard of 58.7' where 75' is required (existing condition is 54.8'); and

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

The subject property is a lawfully existing but severely undersized lot (0.47 acres in a one acre zone), which presently hosts an aged and deteriorated "Cape Cod" style home and two sheds. The existing home contains a kitchen, dining room, living room, two bedrooms and one bathroom, all on the first floor and all very small by modern standards. There is a third bedroom at the attic level. There is no garage. Simply stated, the existing home does not meet the needs of a modern family and is no longer in keeping with the character of the neighborhood as a whole. The Applicant proposes to expand the existing home, both laterally and vertically, in order for it to better meet the needs and desires of a present day family.

The proposed expanded home would feature an open floorplan on the first floor, consisting of living room, dining room, kitchen and family room areas, along with a pantry, mud room and half bath. There would be an open deck off of the rear of the home, on the first floor level. The second floor would have four (4) bedrooms and two full baths. The home would also feature an attached two car garage. The Applicant also proposes to remove the existing two sheds and to install a modest size inground swimming pool in the backyard.

10. [Description of Requested Variances or Exceptions]

This is an application for impervious coverage and front yard setback variances. The proposed coverage is 23.5% where 15% is permitted. The proposed front yard setback is 58.7', which represents an improvement upon the existing condition (54.8'). 75' is required in the zone. Note that the front setback of the front façade of the home (i.e. not including the front steps) is 60', which is the setback permitted by variance for the homes constructed on Lots 31-34 and 38. The lot is also non-conforming as to lot area (as noted above), improvable lot area, lot width and single side yard setback, all of which are pre-existing, non-conforming conditions.

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

11. [Arguments in Support of Application]

The variances requested are "C-1" variances, based upon the hardship created by the undersized lot and the location of the lawfully existing home. If the lot were conforming as to lot area, the lot coverage would only be 11%, well under the permitted 15%. The front yard setback is controlled by the location of the existing home, but is nonetheless proposed to be improved by having less intrusive (upon the setback) front stairs.

Both variances can also be justified under the "C-2" "flexible variance" criteria, in that the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*, would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, as was found by this Board in 2008 for the similar development proposed for Lots 31-34 and 38. The property's dimensions are consistent with all of the lots in the immediate vicinity (i.e. Lots 27 through 38, which is a row of lots on the southbound (western) side of King George Road). In 2008, this Board approved construction of single family homes similar in size to the home proposed by the Applicant (2,546 sf compared to approximately 2,850 sf proposed by the Applicant herein) on Lots 31, 32, 33 and 34 (northerly adjacent to the Applicant's lot) and on Lot 38 (the third lot south of the Applicant's lot). The Board approved variances for the said lots for lot area (required due to the lots having legally merged), improvable lot area, lot width, front-yard setback and lot yield, all for dimensions similar to those proposed by the Applicant herein, finding, *inter alia*, as follows:

48. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, concludes that the applicant has satisfied its burden of proving an entitlement to all of the requested variance relief. The applicant has met its burden of proving an entitlement to the lot area, improvable lot area, lot width, front-yard setback and lot yield variances for Lot 38 under N.J.S.A. 40:55D-70(c)(1) and (c)(2), and for Lots 31 through 34 under N.J.S.A. 40:55D- 70(c)(2).

50. Second, as to the front-yard setback variances requested for Lot 38 and Lots 31 through 34, as well as the lot area, improvable lot area, lot width, and lot yield variances requested for Lots 31 through 34, with respect to the "c(2)" or "flexible c" variance criteria, the Board finds that the applicant has satisfied its burden of demonstrating that the purposes of the Municipal Land Use Law ("MLUL") will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. *The proposed development will provide a desirable visual environment, enhance the visual compatibility of the property with adjoining properties and otherwise promote the general welfare.* The Board approves of the requested front-yard setback variances as permitting a minimum 60 foot front-yard setback but also establishing a maximum 65 foot front-yard setback. *The Board accepts the unrefuted evidence submitted by the applicant that the proposed lots and the dwellings proposed thereon are commensurate with the size and character of other lots and the dwellings thereon in the immediate area.*

52. Fourth, in light of the conditions hereafter set forth, the Board finds that the applicant has satisfied the negative criteria. *The applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Board accepts the unrefuted evidence and opinions of the applicant's planner that the proposed development of all of the lots is consistent with the character of the neighborhood and the goals and objectives of the Township's Master Plan.* Specifically, some of these goals include sufficient flexibility for a variety of housing, land use policies enhancing the community character of the neighborhood, advancing neighborhood conservation and protection and consistency of front-yard setbacks so as to avoid the appearance of "checkerboarding."

(emphasis added).

Additionally, in this case, the replacement of the existing deteriorated and outdated home with a modern home featuring an inground swimming pool would assist in conserving property

values in the neighborhood as whole, which remains a purpose of land use regulation even though that goal is not expressly stated in N.J.S.A. 40:55D-2. Home Builders League of S. Jersey, Inc. v. Township of Berlin, 81 N.J. 127, 144-45 (1979).

The Negative Criteria are also satisfied, as the variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and the purpose of the zone plan and zoning ordinance, as was found by this Board in 2008 for the similar development proposed for Lots 31-34 and 38.

Respectfully Submitted,

POST POLAK, P.A.



By: Frederick B. Zelley, Esq.
Attorneys for the Applicant Phili120 LLC

Dated: January 4, 2024

TOWNSHIP OF BERNARDS
2024 ZONING BOARD OF ADJUSTMENT APPLICATION

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PLANNING/ZONING BOARDS

☒ Bulk or Dimensional ("c") Variance

☐ Appeal of Zoning Officer's Decision

☐ Use ("d") Variance

☐ Interpretation of Zoning Ordinance

☐ Conditional Use ("d") Variance

☐ Minor Subdivision

☐ Floor Area Ratio, Density, or Height ("d") Variance

☐ Major Subdivision - Preliminary / Final

☐ Site Plan - Preliminary / Final

☐ Other (specify): _____

1. APPLICANT: GAURAV PATEL PAYAL JOSHI

Address: 3 FENWICK PLACE BASKING RIDGE NJ 07920

Phone: (home) _____ (work) _____ (mobile) 908-672-8545

Email (will be used for official notifications): gpatel27@gmail.com

2. OWNER (if different from applicant): _____

Address: _____

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

3. ATTORNEY: _____

Address: _____

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

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

Name: _____ Profession: _____

Address: _____

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

5. PROPERTY INFORMATION: Block(s): 7702 Lot(s): 10.05 Zone: R4

Street Address: 3 FENWICK PL BASKING RIDGE NJ 07920 Total Area (square feet/acres): 2.20 acres

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

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☐ No ☒ Yes (if yes, explain) Currently have 6' fence on the side of the base for a corner lot. Should be 4' because it is considered a second front yard.

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: Single family residence seeking 6' fence for side yard, and variance for fence from property line. Lot is a corner lot, with 1 acre of conservation land. Seeking additional 400 sq ft of impervious coverage for rear walkway due to steep slope of yard.

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):
Bulk Variance (NJSA 40:55D-7a) FENCE HEIGHT (21-16:2(a))
FENCE DISTANCE PROPERTY LINE (21-16:2(e)), LOT COVERAGE (21-15.1(d))

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: side yard of house cannot be seen due to 1 acre of conservation land next to it. 4' vs 6' fence make no difference. Fence was placed 6" from property line per original survey by builder, new survey shows 5". Due to inaccurate grading by builder, a retaining wall had to be placed that used up coverage area. Need additional coverage for walkway. Technically I have 2 acres of land, but I can only use 1 acre.

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

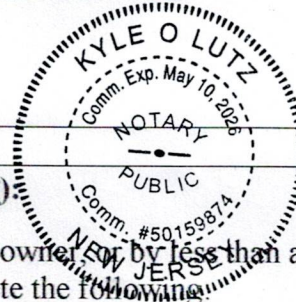
APPLICANT(S) SIGN HERE:

I/we, GARAY PATEL and PAYAL JOSHI 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 30th day of January, 2024.

[Signature]
Notary



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

2024 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Steven Mejia & Sharona Kennedy

Address: 16 Autumn Drive

Phone: (home) (973)704-5392 (work) 732-522-1238 (mobile) (973)704-5392

Email (will be used for official notifications): steve.mejia@hotmail.com

2. OWNER (if different from applicant): _____

Address: _____

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

3. ATTORNEY: _____

Address: _____

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

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

Name: Rui Amaral Profession: architect

Address: 27-B Nobhill Drive Roseland NJ

Phone: (973)482-8795 Email (will be used for official notifications): ramaralra@aol.com

5. PROPERTY INFORMATION: Block(s): 3901 Lot(s): 66 Zone: R-4

Street Address: 16 Autumn Drive Total Area (square feet/acres): 41,414 sf / 0.951 acres

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

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

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

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

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

Existing single-family dwelling with a shallow and irregular shaped property. The proposed is a single-story "great room" rear addition.

Room to be used as family room and study area for (3) children.

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

Per table 501, setback required is 75ft. Proposed setback for addition is 54'10"

SECTION 21.15.1 (d) 1

+ TABLE 501

~~(Ord. #585, Table 501; Ord. #183, § 27, Ord. #1371, § 24.2.1.1 amended; Ord. #1882, § 12.2.1.1 amended)~~

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

Request for variance to build addition attributed to shallow back yard and irregular lot shape. Granting of variance will not have detrimental effects on the public or neighborhood. Proposed addition is similar/consistent with other home layouts in the neighborhood. Additionally, granting of variance will not impair the intent or purposes of the municipal zoning plan & ordinances.

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

APPLICANT(S) SIGN HERE:

I/we, Steven Mejia and Sharona Kennedy 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 20th day of February, 2024.

Notary



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
2024 ZONING BOARD OF ADJUSTMENT APPLICATION

RECEIVED

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PLANNING/ZONING BOARDS

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| <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): _____ |
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1. APPLICANT: Riverwalk Village LLC c/o Silbert Realty & Management Co. Inc.

Address: 152 Liberty Corner Road, Warren, New Jersey 07059

Phone: (home) _____ (work) (908) 604-6900 (mobile) _____

Email (will be used for official notifications): _____

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

Address: _____

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

3. ATTORNEY: Michael E. Silbert, Esq. of DiFrancesco Bateman et al.

Address: 15 Mountain Boulevard, Warren, New Jersey 07059

Phone: (908) 757-7800 ext. 128 Email (will be used for official notifications): msilbert@newjerseylaw.net

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

Name: _____ Profession: _____

Address: _____

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

5. PROPERTY INFORMATION: Block(s): 11201 Lot(s): 10 Zone: E-2

****NOTE** - See Application Cover Letter Attached which addresses access through Lot 1 in Block 1 (Warren Township)**
Street Address: 665 Martinsville Road Total Area (square feet/acres): 9.48 Acres

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

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 [X] Yes (if yes, explain) See Attached

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: A retail and office building and related amenities currently exist on the property (Riverwalk Village) as a conditional use. The Applicant seeks to locate an office tenant on the first floor, in the space identified in the attached floor plan. The tenant will occupy approximately ±3,091 SF of delineated space on the first floor .

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.): As stated above, the retail and office building(s) on the Property are conditional uses in the E-2 Zone. Pursuant to Sec. 21-12.2(n)(5) of the Township's Ordinances, "A retail center shall contain no office use on the first floor." Since the application is for an office tenant on the first floor, "(d)(3)" variance relief is required as a result of the Applicant's departure from the conditional use requirements.

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: See Variance Rider Attached

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

APPLICANT(S) SIGN HERE:

I/we, Brian S. Silbert 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): Brian S. Silbert and _____

Sworn and subscribed before me, this 29th day of January, 2024.

Jana Spota
Notary

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, Bruce Bocina the owner(s) of the property described in this application,

hereby authorize Silbert Realty Management 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.

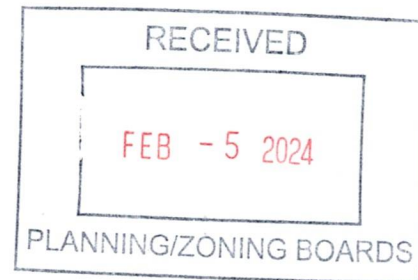
Signature of owner(s): Bruce Bocina

Sworn and subscribed before me, this 29th day of January, 2024.

Jana Spota
Notary

VARIANCE RIDER
TOWNSHIP OF BERNARDS
RIVERWALK VILLAGE, LLC

Block: 11201, Lot: 10 (665 Martinsville Road – Bernards Township)
Block: 1, Lot:1 (201 Liberty Corner Road – Warren Township)



BACKGROUND INFORMATION

The Applicant seeks to locate an office/medical use of approximately ±3,091 SF of delineated space on the first floor of the existing retail center located on Lot 10. The property for which variance relief is sought is identified as Lot 10 in Block 11201, as designated on the Official Tax Map of the Township of Bernards, more commonly known as 665 Martinsville Road (the “**Bernards Property**”). The Bernards Property is located in the Bernards Township E-2 Employment, Office, and Manufacturing Zone. Access to the Bernards Property is facilitated through a portion of property located in the Township of Warren, which property is identified as Lot 1 in Block 1, as designated on the Official Tax Map of the Township of Warren, more commonly known as 201 Liberty Corner Road (a/k/a 675 Martinsville Road, Basking Ridge) (the “**Warren Property**”). The Warren Property is located in the Warren Township OR – Office Research Zone. The Bernards Property and the Warren Property are hereinafter referred to collectively as the “**Subject-Property**”. There are no exterior site improvements proposed in connection with this application.

VARIANCE RELIEF REQUESTED

As it relates to the Warren Property, attached hereto is a letter from the Warren Township Zoning Officer and Planner, dated January 29, 2024 (“Letter of No Jurisdiction”), which letter indicates that the Application does not trigger any departures from the Warren Township Zoning Ordinance as it relates to the Warren Property. Furthermore, the Letter of No Jurisdiction indicates that jurisdiction over this Application rests solely with the Bernards Board of Adjustment.

It should be noted that there have been previous applications and/or appeals to the Bernards Township Planning Board for this Property. Preliminary and final site plan approval was granted by the Township’s Planning Board for the existing retail center on Lot 10 in a Resolution memorialized on September 5, 2000, a copy of which is attached hereto (the “Original Approval”). The Original Approval granted a modification from §21-39.1 for maximum size of parking spaces for retail use, where 10 feet by 20 feet was required, and 9 feet by 18 feet was approved.

Use variance relief pursuant to N.J.S.A. §40:55D-70(d)(3) is required to locate the office/medical use on the first floor of the retail center on Lot 10, since §21-12.3(n)(5) of the Bernards Township Zoning Ordinance, prohibits office uses on the first floor of a retail center.

The Board has the power to grant “(d)(3)” conditional use variances pursuant to N.J.S.A. §40:55D-70(d)(3) “in particular cases and for special reasons” (i.e. the “positive criteria”)

POSITIVE CRITERIA:

As it pertains to the positive criteria of a “d(3)” variance, the Board’s focus must be on whether the site remains appropriate for the conditional use despite the failure to conform to all of the ordinance’s conditions. Coventry Square v. Westwood Board of Adjustment, 138 N.J. 285, 298-299 (1994). The standard does not require a finding that the site is particularly suitable for the use, as is the case with a “d(1)” use variance, since the use itself is permitted (albeit conditionally) and it is the conditions attached to the use from which deviations are sought. Id. at 297.

The zoning board is urged to grant a conditional use variance to permit office/medical use on the first floor of an existing retail center. Despite not conforming to all ordinance conditions, the conditional use variance sought can be granted because the site remains appropriate for the proposed use.

The proposed tenant can be characterized as a “retail dentistry” occupying approximately 3,000 SF on the ground floor of a 50,000 SF retail center. The tenant exclusively occupies the ground floors of retail centers. The attempt to place the tenant on the second floor was unsuccessful, as their business model is tailored to first-floor retail center setups. Recent real estate market trends indicate a growing preference among medical/office users to locate their offices in retail centers. For instance, it has become commonplace to see med spas successfully operating within retail centers, reflecting the evolving nature of the office/medical use in the post COVID-19 world.

Based upon the existing tenants in the retail center, it is readily apparent that the retail center and overall site has the flexibility to accommodate diverse uses on the first floor. The retail center currently houses a variety of retail, restaurant, and service tenants, all of which are conditionally permitted uses. Notable tenants include Ling Ling's Restaurant, European Wax Center, Joy of Living Interior & Design, a Nail Salon, the Soup Shoppe, Warren Eye Care, a Pharmacy, O'Bagel, a Jewelry Store, Supercuts, Hills of Herat, 3 West, and a women's apparel store.

The office/medical use will only occupy a small portion of the ground floor, leaving the majority of the space for other conditionally permitted tenants. This ensures that the overall tenant mix and character of the retail center are maintained. Notably, the proposed dentistry is replacing what can ironically be characterized as a real estate office. This history suggests that the site has functioned with an office use on the ground floor previously, supporting the argument for continuity in allowing office/medical use on the ground floor. Again, the conditional use variance can be granted under the “positive criteria” because the site remains appropriate for the proposed use despite not conforming to all the conditional use requirements under Section 21-12.3(n)(5).

NEGATIVE CRITERIA:

As to the negative criteria of a “d(3)” conditional use variance, the Board’s focus must be on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial detriment to the public good. Coventry Square, 138 N.J. at 299. Similarly, the Board’s focus in a “d(3)” conditional use variance case must be on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial impairment of the intent and purpose of the master plan and zoning ordinance, i.e., whether the proposal was “reconcilable with the zone.” TSI East Brunswick v. East Brunswick Board of Adj., 215 N.J. 26, 43-46 (2013).

The presence of a retail dentistry use on the first floor of the existing retail center contributes to the well-being of the community by providing essential healthcare services in a conveniently accessible location. The proposed dentistry on the first floor, as opposed to the second floor, does not pose substantial detriment to the public good. The space occupied by the dentistry is de minimus relative to the overall size of the retail center. This ensures that the introduction of the medical/office use on the first floor maintains a proportionate and limited footprint, minimizing any potential impact on the overall dynamics of the retail center it reinforces the argument that the proposed use does not *substantially* impair the intent and purpose of the master plan.

If necessary, the Board has the ability to impose reasonable conditions, on its approval to ensure that the first floor medical/office use do not cause substantial detriment to the public good. Additionally, conditions can be imposed in its approval of the conditional use variance sought to ensure that the deviations from the conditional use requirements do not cause substantial impairment of the intent and purpose of the Township’s master plan and zoning ordinance.