

TOWNSHIP OF BERNARDS **ZONING BOARD OF ADJUSTMENT**

REGULAR MEETING AGENDA v2 *REVISED*

Warren Craft Meeting Room
December 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. November 9, 2022 – Regular Session
- 6. APPROVAL OF RESOLUTIONS**
 - A. Ratz, William & Lorena; Block 803, Lot 13; 27 Brentwood Court; ZB22-022 (withdrawn)
- 7. APPROVAL OF RESOLUTION #23-06 – Appointment of Board Traffic Engineer**
- 8. COMPLETENESS AND PUBLIC HEARING**
 - A. [Devaney, J. E./Mistry-Devaney, K.](#); Block 7601, Lot 29; 476 Lyons Road; Bulk Variance; ZB22-029
 - B. [Sell, Adam & Sarah Joy](#); Block 5801, Lot 14; 31 Lyons Place; Bulk Variance; ZB22-030
 - C. [Priscilla’s Pantry LLC](#); Block 801, Lot 4.01; 199 Morristown Road; Amended Preliminary/Final Site Plan, Bulk & “d” Variances; ZB22-027
- 9. COMMENTS FROM MEMBERS**
- 10. COMMENTS FROM STAFF**
- 11. ADJOURN**

12/07/2022 dssw
FINAL

**TOWNSHIP OF BERNARDS
2022 ZONING BOARD OF ADJUSTMENT APPLICATION**

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

1. APPLICANT: JAMES E DEVANEY & KALPANA MISTRY-DEVANEY
MR. DEVANEY & Ms. MISTRY

Address: 476 Lyons Rd Basking Ridge, NJ 07920

Phone: (home) 908 208 0602 (work) 973 713 3599 (mobile) _____

Email (will be used for official notifications): Kalpanadmistry@yahoo.com

2. OWNER (if different from applicant): SAME

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: DANIEL ENGIN - MENDHAM DESIGN Profession: ARCHITECT

Address: PO BOX 127 MENDHAM, NJ 07945

Phone: 973.886.5727 Email (will be used for official notifications): dan.engin@mendhamdesign.com

5. PROPERTY INFORMATION: Block(s): 7601 Lot(s): 29 Zone: R-4

Street Address: 476 LYONS RD. Total Area (square feet/acres): 0.712 ACRES
31,014 SF

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) EXISTING NON-COMFORMING LOT WIDTH AND REQUIRED 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:

EXISTING SINGLE FAMILY HOME CONSTRUCTED IN R40. PROPOSED ONE-STORY ADDITION TO ADD A BATHROOM AND COVERED ENTRY.

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

REQUIRED FRONT YARD SETBACK. 75' REQUIRED 24.4' PROPOSED. CHAPTER 21 TABLE 501 MINIMUM DIMENSIONAL REQUIREMENTS - MINIMUM FRONT YARD

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

THIS IS AN EXISTING UNDERSIZED PROPERTY WITH AN EXISTING HOME CONSTRUCTED PRIOR TO CURRENT ZONING REQUIREMENTS. THE ENTIRE HOME IS IN THE REQUIRED FRONT YARD, WHICH RESULTS IN ANY ADDITION REQUIRING VARIANCE RELIEF.

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

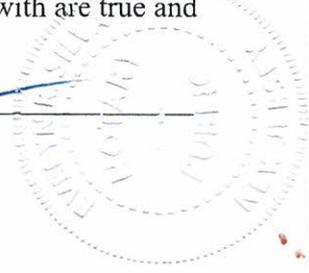
APPLICANT(S) SIGN HERE:

I/we, Jim Devaney Jr. and Kalpna Mistry-Devaney 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 29 day of September, 2022

[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
2022 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Adam Sell + SARAH JOY SELL

Address: 31 Lyons ~~Road~~ PLACE

Phone: (home) _____ (work) _____ (mobile) 201.401.3826

Email (will be used for official notifications): adam.sell1@gmail.com

2. OWNER (if different from applicant): Same

Address: _____

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

3. ATTORNEY: N/A

Address: _____

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

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

Name: Richard Vollmar, Blue Line Stone Home & Engineering Profession: NJPE Lic. No. 39296

Address: 16 Lake Lenore

Phone: 973.997.8444 Email (will be used for official notifications): rick@bluelinestonehome.com

5. PROPERTY INFORMATION: Block(s): 5801 Lot(s): 14 Zone: R-4

Street Address: 31 Lyons Road Total Area (square feet/acres): 52,272 / 1.2

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

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

Single family residential. 1.2 acres. Construction of in-ground swimming pool, adjacent patio, fencing and grading. Construction of subsurface seepage pits and trench to mitigate off-site overland flow.

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

Maximum impervious coverage. 15% max / 16.7% proposed
Per Table 501

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

Although not required to do so per the stormwater management ordinance (<1000 sf add'tl impervious cover) we are adding underground storage (Cultec seepage pit and trench drain) to mitigate the additional impervious area (567 sf).

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

APPLICANT(S) SIGN HERE.

I/we, [Signature] and Seanh Seoo 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 Seanh Seoo

Sworn and subscribed before me, this 19th day of OCTOBER, 2022

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

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
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Priscilla's Pantry Limited Liability Company

Address: 199 Morristown Road, Basking Ridge, New Jersey 07920

Phone: (home) _____ (work) (908) 647-5320 (mobile) _____

Email (will be used for official notifications): priscilla@priscillaspantry.net

2. OWNER (if different from applicant): 195 Morristown Road LLC

Address: 195-199 Morristown Road, Basking Ridge, New Jersey 07920

Phone: (973) 765-0100 Email (will be used for official notifications): jimmyc@silvermangroup.net

3. ATTORNEY: Frederick B. Zelle / Law Offices of Frederick B. Zelle LLC

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): fzelle@fbzlegal.com

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

Name: Catherine Mueller / Page-Mueller Engineering Consultants Profession: P.E.

Address: P.O. Box 4619, Warren, New Jersey 07059

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

5. PROPERTY INFORMATION: Block(s): 801 Lot(s): 4.01 Zone: E-5

Street Address: 199 Morristown Road Total Area (square feet/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*) Please see Addendum

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 Sections 21-10.5(b) and Tables 402 and 506; 21-16.1(b) and (c) and Table 507; Section 21-17.4(a)(1). Please see Addendum.

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, Priscilla Vincent _____ 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): Priscilla Vincent and _____

Sworn and subscribed before me, this 13th day of September, 2022.

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, 195 Morristown Road, LLC the owner(s) of the property described in this application,

hereby authorize Priscilla Vincent / Priscilla's Pantry Limited Liability Company 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): Holden Sabato Holden Sabato, Development Coordinator

Sworn and subscribed before me, this 14th day of September, 2022.

Frederick B. Zelley
Frederick B. Zelley
An Attorney at Law of the

ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION

Priscilla's Pantry Limited Liability Company

**199 Morristown Road, Basking Ridge
Block 801, Lot 4.01 (E-5 Zone)**

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

6. [Pending or Prior Board Applications involving the Property]

By Resolution dated January 6, 2016 under Application Number ZB14-27, the Silverman Group, the Owner of the subject property obtained site plan approval for the subject lot and the two contiguous lots also owned by the Silverman Group. The said approval included a D-1 Use Variance for use of the building located on the subject lot as a butchery, which was and is not permitted in the E-5 (Office) Zone. By Resolution dated October 3, 2018 under Application Number ZB14-27A, this Applicant obtained amended site plan approval to permit the operation of her speciality food store, which is also not a permitted use in the E-5 Zone, in replacement of the previously approved butchery. Copies of both Resolutions are submitted herewith.

7. [Current Violations of the Zoning Ordinance involving the Property]

There is a post-mounted sign for the Applicant's store located along North Maple Avenue (in fact, within the North Maple Avenue Right-of-Way), which was not approved as part of the Silverman Group's site plan. It is attached to posts from a pre-existing sign that was presumably supposed to have been removed as per the Silverman Group application. The Silverman Group approval required three (3) signs of similar design and materials, which were to match the appearance of the office building. One of the three signs, to be smaller than the other two, was specifically intended to be for the building now occupied by the Applicant. The two larger signs were in fact constructed to match the office building and are located at the two (2) entrances to the property. They serve to identify the occupants of the office building. The third sign was never constructed. The butchery, and now the Applicant's business, were and are identified by the wooden post-mounted sign. The Applicant believes that the existing sign is more befitting of the building housing her business and is requesting modification of the site plan to permit it to remain, provided it is removed from the North Maple Avenue ROW. The Applicant proposes to relocate the sign one foot in from the ROW. The said location is expressly permitted under the Silverman Group's original site plan approval, which permits the signs to be between one foot and ten feet from the ROW.

8. [Description of Deed Restrictions or Easements Affecting the Property]

None, other than the conditions of the aforementioned site plan approvals.

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

The property is a 4.848 acre parcel located at the corner of Route 202 (a/k/a Morristown Road) and North Maple Avenue and adjacent to the Route 287 South entrance ramp. The property is accessible from both Route 202 and North Maple Avenue. It hosts an office building constructed in or about 2016 and the building now occupied by the Applicant. Based upon aerial photography, the Applicant's building in its present configuration dates back to the early 1960s and the original portion thereof dates back to at least the mid 1950s. Prior to the 2016 redevelopment of the property, the Applicant's building hosted the Sandra John interior decorating shop.

The Applicant is presently utilizing two (2) rented external refrigeration units to satisfy the needs of her specialty food store. She proposes to install a single, permanent 23'11" X 15'10" self-contained refrigeration unit 6 feet north of the northwestern portion of her building, as shown on the plans submitted herewith. The exterior of the unit would be painted to match and blend with the appearance of the exterior of her building.

10. [Description of Requested Variances or Exceptions]

The addition of the proposed refrigeration unit to the property would require the following use and bulk variances:

1. "D-2" use variance for expansion of the "D-1" use variance previously granted by this Board for the Applicant's store.
2. "D-4" use variance for an increase in the Floor Area Ratio (from 12.26% to 12.44% where 10% is permitted). Ordinance Section 21-10.5(b) and Tables 402 and 506.
3. "C-1" and/or "C-2" bulk variance for an Accessory Building located in a front yard. Ordinance Section 21-16.1(b).
4. "C-1" and/or "C-2" bulk variance for an Accessory Building located 6 feet from another building where 50 feet is required. Ordinance Section 21-16.1(c) and Table 507.
5. "C-1" and/or "C-2" bulk variance for an increase in Impervious Coverage (from 34.03% to 34.23% where 25% is permitted). Ordinance Section 21-10.5(b) and Tables 402 and 506.

This application also seeks modification of Conditions 9, 10 and 11 of the Silverman Group's 2016 site plan approval and Condition 6 of the Applicant's 2018 site plan approval, to enable the continued use of the existing wooden post-mounted, presently located within the North Maple Avenue ROW but proposed to be one foot south of the ROW line, in lieu of the construction of a masonry sign which would match the office building's signs. The proposed new location would conform to the 1 foot to 10 feet setback requirement for which a variance was granted by this Board

in the Silverman Group site plan approval, where a 20 foot setback would otherwise be required by Ordinance Section 21-17.4(a)(1). If such approval would require a new “C-1” and/or “C-2” bulk variance, the Applicant shall seek the same.

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]

Positive Criteria for “D-2” Use Variance for Expansion of a Non-Conforming Use

“The [MLUL’s] restriction against the enlargement of a nonconforming use as of right applies to the physical structure as well as its use.” Grundlehner v. Dangler, 29 N.J. 256, 264 (1959). To determine whether an activity constitutes expansion of a nonconforming use, our courts “apply a qualitative test, and consider the intensification of the nonconforming use as a relevant factor.” Conselice v. Borough of Seaside Park, 358 N.J. Super. 327, 334-335 (App. Div. 2003). Unless the enlargement is “insubstantial”, d(2) variance relief must be obtained. Ibid.

In Kohl v. Mayor & Council of Borough of Fair Lawn, 50 N.J. 268, 281 (1967), the New Jersey Supreme Court noted that “the owner of a nonconforming use, like any other property owner, may be granted a variance in a proper case. In passing on such an application the governing body may consider the fact that a nonconforming use already exists on the premises and it is not necessary for an applicant to show that the variance properly could have been granted to create the nonconforming use in the first instance.” In Burbridge v. Governing Body of Twp. of Mine Hill, 117 N.J. 376, 388 (1990), the Court clarified that the enhanced proof requirement for a D-1 use variance under its decision in Medici v. BPR Co., 107 N.J. 1 (1987) is “focused on variances for new uses rather than on expansions of existing uses”. Burbridge, 117 N.J. at 398. Therefore, d(1) variances for the “creation of a new use” are subject to the restrictive standards of Medici, whereas d(2) variances “for expansion of a nonconforming use” are subject to the more liberal standards set forth in Burbridge. See Saadala v. E. Brunswick Zoning Bd. of Adjustment, 412 N.J. Super. 541, 547 (App. Div. 2010).

The Supreme Court in Burbridge observed that: “Obviously, cases in which the variance would create an entirely new nonconforming use require greater proof to demonstrate the merits of such a variance than do cases in which the applicant seeks only a minor expansion of a pre-existing nonconforming use. Although an expansion of a pre-existing nonconforming use can be granted either where the use inherently serves the public good . . . or where the land is particularly suited only for that nonconforming use, . . . such an expansion, when minor, can be based as well on other considerations such as aesthetics.” Burbridge, 117 N.J. at 393. Thus, “[w]hen an applicant seeks the expansion of an existing non-conforming use, it must meet the requirements contained in N.J.S.A. 40:55D-70(d), but the focus is on “the quality, character and intensity of the use, viewed in their totality and with regard to their overall effect on the neighborhood and the zoning plan.”

Town of Belleville v. Parrillo's, Inc., 83 N.J. 309, 314 (1980).

In this Application, the proposed expansion of the non-conforming use, which would present only *de minimis* changes in coverage and FAR and no increase whatsoever in number of customers, number of employees, parking needs, etc., is arguably “insubstantial” enough to not require a “D-2” variance under Conselice, supra. Should the Board find to the contrary and require a “D-2” variance, it is respectfully submitted that “the quality, character and intensity” of the Applicant’s use of the property with the proposed refrigeration unit would be no different from those of the Applicant’s use of the property without that unit, when “viewed in their totality and with regard to their overall effect on the neighborhood and the zoning plan.” Parrillo's, supra.

Positive Criteria for “D-4” Use Variance for Excessive Floor Area Ratio

In Randolph Town Ctr. Assocs., L.P. v. Twp. of Randolph, 324 N.J. Super. 412, 416 (App. Div. 1999), the Appellate Division held that “pursuant to [Coventry Square v. Westwood Zoning Bd. of Adj., 138 N.J. 285 (1994),] an applicant for a FAR (d)(4) variance need not show that the site is particularly suited for more intensive development”. Rather, “[I]ike a conditional use variance applicant, FAR variance applicants must show that the site will accommodate the problems associated with a proposed use with larger floor area than permitted by the ordinance”. Ibid. at 417.

In this Application, given the *de minimis* increase in FAR that would arise from the installation of the proposed refrigeration unit, and given the absence of any problems arising from the existing FAR to date, there is no credible argument that any problem(s) arising from the increase, if any, could not be accommodated by the site.

Positive Criteria for Bulk Variances and Signage Condition Modification

The requested bulk variances pertaining to the refrigeration unit are “C-1” variances, based upon the hardship created by the location of the lawfully existing building occupied by the Applicant and the lawfully existing coverage caused by the property’s having two buildings with associated driveway parking lot areas. All of the requested bulk variances also satisfy the “C-2” criteria, as the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. Specifically, the following purposes of the MLUL, set forth in N.J.S.A. 40:55D-2, would be advanced by the granting of the requested variances:

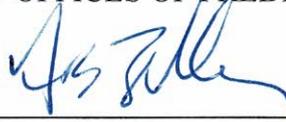
- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. **A food retailer’s use of an appropriately sized and located refrigeration unit to maintain freshness of its food promotes the public health and general welfare of the residents of the community and other customers.;**
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement. **The Applicant’s proposal to paint the proposed**

refrigeration unit to match the existing building will promote and continue the existing desirable visual environment of the subject property. Additionally, retaining the existing wooden free-standing sign, which is more in keeping with the building behind it than a sign that would match the office building's signs, would also satisfy this Purpose of the MLUL.

The Negative Criteria are also satisfied, as all of 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. The bulk changes are *de minimis* and by painting the refrigeration unit to match the existing building, the aesthetic impact will be minimal as well.

Respectfully Submitted,

LAW OFFICES OF FREDERICK B. ZELLEY LLC



By: Frederick B. Zelley, Esq.
Attorneys for the Applicant
Priscilla's Pantry Limited Liability Company

Dated: September 15, 2022