BERNARDS TOWNSHIP ENVIRONMENTAL COMMISSION

Regular Meeting of August 23, 2021-7 pm

The Environmental Commission meeting for August 23, 2021, will be conducted using Zoom Video Conferencing. The public will be able to view the meeting live by clicking on this link: https://us02web.zoom.us/j/88978880713?pwd=cml1WUpxbmJqbEpLK3RXUERFNUo3dz09 at 7:00 PM or by calling 1-646-558-8656 and entering Meeting ID: **889 7888 0713** and Passcode: **497637**

Meeting Agenda

1. **Call to Order**
2. **Open Public Meeting Statement**
3. **Flag Salute**
4. **Roll Call**
5. **Approval of EC Meeting Minutes Regular –**July 26, 2021
6. **Reports and Miscellaneous Correspondence**
   a. 161 S Maple Ave-Freshwater Wetlands General Permit

7. **Old Business**
   a. **Status on Current Projects**:
   i. Public Outreach
   ii. Reusable Bag Design Challenge
   iii. EC Comments on the 2019 Reexamination Report

8. **New Business**
   a. Applications
   i. Moreira-PB21-004-37 Parkview Ave-Conditional Use Apartment
   ii. Pyramid Healthcare Inc. ZB21-025-170 Mt. Airy Rd-Interpretation of E-3 Zone Use.

9. **Comments by Public**
10. **Comments by Members**
11. **Adjournment**

Susan Long, Secretary

Please call (908) 204 - 3000 seventy-two (72) hours in advance if accommodations are required, including assistive listening devices (ALD).

BERNARDS TOWNSHIP ENVIRONMENTAL COMMISSION MINUTES – July 26, 2021 – 7pm

CALL TO ORDER

Chairperson Ann Parsekian called the meeting to order at 7:02 pm via Zoom conference call in accordance with the Open Public Meeting Act of 1975.

FLAG SALUTE

All those assembled saluted the flag.

ROLL CALL

Present: John Crane, Jane Conklin, Nancy Cook, Ann Parsekian, Jason Roberts, Alice Smyk
Absent: Joan Bannan, Debra DeWitt, James LaMaire, Sarah Wolfson
Also Present: Kaitlin Cartoccio – Recording Secretary, Todd Edelstein – Resident

APPROVAL OF MEETING MINUTES

One change to be made to the May minutes regarding member comment and public comment. Motion to approve EC regular meeting minutes – May 24, 2021 by John Crane, seconded by Alice Smyk. Nancy Cook abstained. All others in favor, motion carried.

REPORTS & MISCELLANEUS CORRESPONDENCE

a. **123 Whitenack Rd –** Septic Alteration Plan

   No comments.

b. **73 Deer Ridge Rd –** Septic Alteration Plan

   No comments.

c. **99 & 111 Mine Brook Rd –** Freshwater Permits & LOI Extension

   No comments.

OLD BUSINESS

a. Status on Current Projects:

i. Public Outreach

Facebook outreach – reduced postings but continued posts about the Spotted Lantern Fly.

ii. Reusable Bag Design Challenge

Ann Parsekian sent out the PDF containing all the finalist's entries. The EC members looked over the file and picked the finalists which will be announced

shortly.

iii. EC Comments on the 2019 Reexamination Report

There was some discussion regarding the reexamination report, but it was agreed to officially be tabled until the next meeting.

NEW BUSINESS

a. Applications

i. Weisfelner – ZB21-019 – 22 High Meadow Rd – Construction of inground pool not located behind the rear building of existing structures on adjoining lots.

Tabled until August.

ii. Fabian – ZB21-021- 20 Addison Dr – Bulk Variance for max impervious coverage for inground pool-patio.

The Environmental Commission notes that construction on the property started prior to the application review. The Environmental Commission notes the lack of details regarding the recharge of stormwater as part of the proposed development. The recharge of stormwater is required when the impervious surface is increased by > 1,000 sq ft. Site drainage in general is a concern due to the existing characteristics of the property, for example the presence of poorly drained soil.

The Environmental Commission noted that the rain garden proposed could be moved to a better area. A rain garden is proposed within soil rated “C”, however “B” is proposed by the Environmental Commission as the better area.

Regarding this application, pool water discharge may result from backwashing of filters, or from the draining of swimming pools at the end of the season, or during maintenance. This water often contains pool treatment chemicals that can cause damage to the receiving environment in the form of non-point source pollution. Therefore, the Environmental Commission wants township residents to use the best management practices available when discharging pool water.

The applicant should consult the native plants list posted on the EC webpage for appropriate native trees, shrubs, and plants.

Motion by Jane Conklin, seconded by Alice Smyk.

All in favor, motion carried.

iv. **Caesar – ZB21-022 –** 24 Post Terrace – Rear yard setback to construct a second story master suite over an existing garage.

Tabled until August.

v. **Verb – ZB21-024 –** 33 Long Rd – Variance to construct pool (1) not behind rear building line of adjacent building, (2) Pool located in front yard.

Tabled until August.

PUBLIC COMMENT

Todd Edelstein commented that the bag designs the students submitted were very creative. Any changes made for the final copies should be brought to their attention. He also mentioned that Verizon tore all the grass and shrubs up in front near 287. Last meeting Todd mentioned the program he sent regarding Plastic Wars and commented about the possibility of recycling pill bottles.

COMMENTS BY MEMBERS

Nancy Cook commented that the EC brought up similar recycling concerns on the recycling tour they went on in June. Ann thanked everyone for reviewing the reusable bag entries and encouraged members to review the reexamination for August.

ADJOURNMENT

Meeting was adjourned at 8:57 pm. Motion by Nancy Cook seconded by Alice Smyk. All in favor, motion carried.

Respectfully submitted,
Kaitlin Cartoccio, Meeting Secretary

Bernards Township Environmental Commission

TO: Zoning Board Chairperson and Members

FROM: Ann Parsekian, Chairperson
Bernards Township Environmental Commission

DATE: July 29, 2021

RE: Applications review

The Environmental Commission reviewed these applications at their July 26, 2021 meeting and forwards the following comments.

Board of Adjustment
Fabian ZB21-021 20 Addison Dr.

The Environmental Commission reviewed this application at its July 26, 2021 meeting and has the following comments:

The EC notes that construction commenced prior to this application. The proposed increase in impervious area is greater than the 1,000 sf trigger to require stormwater recharge and that a raingarden has been proposed within hydrologic soil group rating "c", whereas the adjacent hydrologic soil group rating "b" would be better. The EC recommends discussion of the placement of the rain garden and review of its sufficiency.

The EC is aware of precedent for pool and deck construction in the ¾-acre residential zone where masonry pool deck and associated patio was disallowed/removed in order to reduce impervious coverage. Such precedent should be considered in light of the proposed overage in this application.

Pool water discharge may result from backwashing of filters, or from the draining of swimming pools at the end of season, or during maintenance. This water often contains pool treatment chemicals than can cause damage to the receiving environment in the form of non-point source pollution. Therefore, the Environmental Commission wants township residents to use the best management practices available when discharging pool water, which can be found here: BMPs: Pool Water Discharge

The applicant should consult the native plant lists posted on the EC webpage for appropriate native trees, shrubs, and plants, or use this link: Recommended Tree and Shrub List

Cc: David Schley, Township Planner
Cyndi Kiefer, Secretary; for distribution to BOA members

ETI ENVIRONMENTAL TECHNOLOGY INC.

Environmental Consultants

CELEBRATING 30 YEARS IN BUSINESS

August 2, 2021

SENT VIA CERTIFIED MAIL

To: Property Owner or Interested Party

RECEIVED
AUG 6 2021
BERNARDS TOWNSHIP ENGINEERING

Re: Application: Freshwater Wetlands General Permit 1 – Maintenance of existing features
Applicant: Heidi Landry
Subject Property: 161 South Maple Avenue
Block 1602; Lot 13
Bernards Township, Somerset County

Dear Property Owner or Interested Party:

This letter is to provide you with legal notification that an application for a Freshwater Wetlands General Permit 1, pursuant to N.J.A.C. 7:7A-7.1, will be submitted to the New Jersey Department of Environmental Protection, Division of Land Resource Protection for the project shown on the enclosed site plans. A brief description of the project follows:

The site is currently occupied by a residential structure, with associated features including a driveway, detached garage, lawn and pond. The project is after-the-fact authorization for re-construction of an underground drainage system into the on-site pond, which then drains under S. Maple Avenue to an off-site stream. Such construction required the disturbance of freshwater wetlands on the subject property.

The complete permit application package can be reviewed at the municipal clerk's office in the municipality in which the site subject to the application is located or by appointment at the Department's Trenton Office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the site. Please submit your written comments within 15 calendar days of receiving this letter to:

If By Regular Mail:
New Jersey Department of Environmental Protection
Division of Land Resource Protection
P.O. Box 420, Code 501-02A
Trenton, New Jersey 08625
Attn: Bernards Township Supervisor

32 Grove Street • P.O. Box 50 • Chester, NJ 07930
(908) 879-8500 • Fax (908) 879-8688 • E-mail: info@eticonsultants.com

SOIL EROSION AND SEDIMENT CONTROL NOTES

SOMERSET-UNION SOIL EROSION AND SEDIMENT CONTROL NOTES
1. THE SOMERSET-UNION SOIL CONSERVATION DISTRICT SHALL BE NOTIFIED IN WRITING 48 HOURS IN ADVANCE OF ANY LAND DISTURBING ACTIVITY.

2. ALL SOIL EROSION AND SEDIMENT CONTROL PRACTICES SHALL BE INSTALLED PRIOR TO ANY MAJOR SOIL DISTURBANCES, OR IN THEIR PROPER SEQUENCE AND MAINTAINED UNTIL PERMANENT PROTECTION IS ESTABLISHED.

3. ANY DISTURBED AREAS THAT WILL BE LEFT EXPOSED MORE THAN 30 DAYS AND NOT SUBJECT TO CONSTRUCTION TRAFFIC, WILL IMMEDIATELY RECEIVE A TEMPORARY SEEDING. IF THE SEASON PREVENTS THE ESTABLISHMENT OF A TEMPORARY COVER, THE DISTURBED AREAS WILL BE MULCHED WITH STRAW, OR EQUIVALENT MATERIAL, AT A RATE OF TWO (2) TONS PER ACRE, ACCORDING TO NJ STATE STANDARDS

4. PERMANENT VEGETATION SHALL BE SEEDED OR SODDED ON ALL EXPOSED AREAS WITHIN TEN (10) DAYS AFTER FINAL GRADING. MULCH WILL BE USED FOR PROTECTION UNTIL SEEDING IS ESTABLISHED

5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE NJ STATE STANDARDS FOR SOIL EROSION AND SEDIMENT CONTROL IN NEW JERSEY.

6. A SUB-BASE COURSE WILL BE APPLIED IMMEDIATELY FOLLOWING ROUGH GRADING AND INSTALLATION OF IMPROVEMENTS IN ORDER TO STABILIZE STREETS, ROADS, DRIVEWAYS AND PARKING AREAS. IN AREAS WHERE NO UTILITIES ARE PRESENT, THE SUB-BASE SHALL BE INSTALLED WITHIN 15 DAYS OR PRELIMINARY GRADING.

7. IMMEDIATELY FOLLOWING INITIAL DISTURBANCE OR ROUGH GRADING ALL CRITICAL AREAS SUBJECT TO EROSION (I.E.: STEEP SLOPES, ROADWAY EMBANKMENTS) WILL RECEIVE A TEMPORARY SEEDING IN COMBINATION WITH STRAW MULCH OR A SUITABLE EQUIVALENT, AT A RATE OF TWO (2) TONS PER ACRE, ACCORDING TO THE NJ STATE STANDARDS.

8. ANY STEEP SLOPES RECEIVING PIPELINE INSTALLATION WILL BE BACKFILLED AND STABILIZED DAILY, AS THE INSTALLATION PROCEEDS (I.E.: SLOPES GREATER THAT 3:1)

9. TRAFFIC CONTROL STANDARDS REQUIRE THE INSTALLATION OF A 50'X30'X6"PAD OF 1 1/2" OR 2" STONE, AT ALL CONSTRUCTION DRIVEWAYS, IMMEDIATELY AFTER INITIAL SITE DISTURBANCE.

10. AT THE TIME WHEN THE SITE PREPARATION FOR PERMANENT VEGETATIVE STABILIZATION IS GOING TO BE ACCOMPLISHED, ANY SOIL THAT WILL NOT PROVIDE A SUITABLE ENVIRONMENT TO SUPPORT ADEQUATE VEGETATIVE GROUND COVER, SHALL BE REMOVED OR TREATED IN SUCH A WAY THAT WILL PERMANENTLY ADJUST THE SOIL CONDITIONS AND RENDER IT SUITABLE FOR VEGETATIVE GROUND COVER. IF THE REMOVAL OR TREATMENT OF THE SOIL WILL NOT PROVIDE SUITABLE CONDITIONS, NON-VEGETATIVE MEANS OF PERMANENT GROUND STABILIZATION WILL HAVE TO BE EMPLOYED.

11. IN THAT NJSA 4:24-39 ET SEQ., REQUIRES THAT NO CERTIFICATE OF OCCUPANCY BE ISSUED BEFORE THE PROVISIONS OF THE CERTIFIED PLAN FOR SOIL EROSION AND SEDIMENT CONTROL HAVE BEEN COMPLIED WITH FOR PERMANENT MEASURES. ALL SITE WORK FOR SITE PLANS AND ALL WORK AROUND INDIVIDUAL LOTS IN SUBDIVISIONS, WILL HAVE TO BE COMPLETED PRIOR TO THE DISTRICT ISSUING A REPORT OF COMPLIANCE FOR THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY BY THE MUNICIPALITY.

12. CONDUIT OUTLET PROTECTION MUST BE INSTALLED AT ALL REQUIRED OUTFALLS PRIOR TO THE DRAINAGE SYSTEM BECOMING OPERATIONAL.

13. ANY CHANGES TO THE CERTIFIED SOIL EROSION AND SEDIMENT CONTROL PLAN WILL REQUIRE THE SUBMISSION OF REVISED SOIL EROSION AND SEDIMENT CONTROL PLANS TO THE DISTRICT FOR RE-CERTIFICATION. THE REVISED PLANS MUST MEET ALL CURRENT NJ STATE SOIL EROSION & SEDIMENT CONTROL STANDARDS.

14. THE SOMERSET-UNION SOIL CONSERVATION DISTRICT SHALL BE NOTIFIED OF ANY CHANGES IN OWNERSHIP.

15. MULCHING TO THE NJ STANDARDS IS REQUIRED FOR OBTAINING A CONDITIONAL REPORT OF COMPLIANCE. CONDITIONALS ARE ONLY ISSUED WHEN THE SEASON PROHIBITS SEEDING.

16. CONTRACTOR IS RESPONSIBLE FOR KEEPING ALL ADJACENT ROADS CLEAN DURING LIFE OF CONSTRUCTION PROJECT.

17. THE DEVELOPER SHALL BE RESPONSIBLE FOR REMEDIATING ANY EROSION OR SEDIMENT PROBLEMS THAT ARISE AS A RESULT OF ONGOING CONSTRUCTION AT THE REQUEST OF THE SOMERSET-UNION SOIL CONSERVATION DISTRICT.

18. HYDRO SEEDING IS A TWO- STEP PROCESS. THE FIRST STEP INCLUDES SEED, FERTILIZER, LIME, ETC., ALONG WITH MINIMAL AMOUNTS OF MULCH TO PROMOTE CONSISTENCY, GOOD SEED TO SOIL CONTACT, AND GIVE A VISUAL INDICATION OF COVERAGE. UPON COMPLETION OF SEEDING OPERATION, HYDRO-MULCH SHOULD BE APPLIED AT A RATE OF 1500 LBS. PER ACRE IN SECOND STEP. THE USE OF HYDRO-MULCH, AS OPPOSED TO STRAW, IS LIMITED TO OPTIMUM SEEDING DATES AS LISTED IN THE NJ STANDARDS.

19. UNFILTERED DEWATERING IS NOT PERMITTED. NECESSARY PRECAUTIONS MUST BE TAKEN DURING ALL DEWATERING OPERATIONS TO MINIMIZE SOIL TRANSFER. ANY DEWATERING METHODS USED MUST BE IN ACCORDANCE WITH THIS STANDARD FOR DEWATERING.

BASIN COMPACTION NOTES
1. IMMEDIATELY PRIOR TO SEEDING, THE SURFACE SHOULD BE SCARIFIED 6" TO 12" INCHES WHERE THERE HAS BEEN SOIL COMPACTION. THIS PRACTICE IS PERMISSIBLE ONLY WHERE THERE IS NO DANGER TO UNDERGROUND UTILITIES (CABLES, IRRIGATION SYSTEMS, ETC.).

2. INSPECT SITE JUST BEFORE SEEDING. IF TRAFFIC HAS LEFT THE SOIL COMPACTED, THE AREA MUST BE RETILED AND FIRMED IN ACCORDANCE WITH ABOVE.

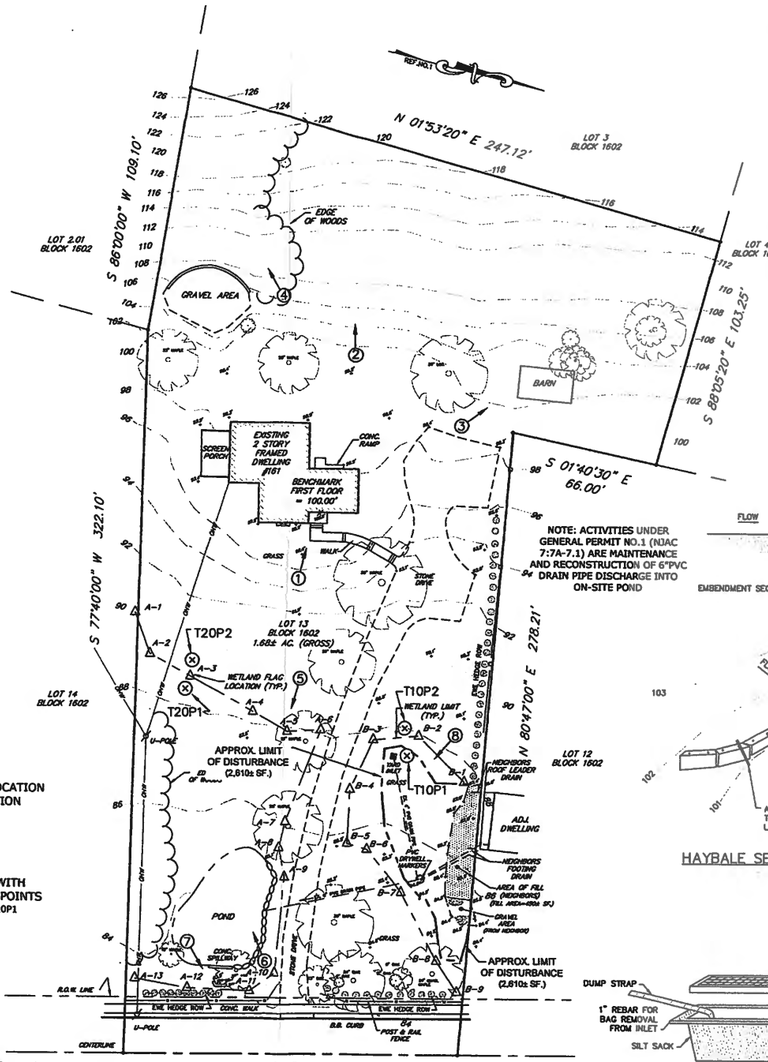
3. IMMEDIATELY PRIOR TO TOPSOILING, THE SURFACE SHOULD BE SCARIFIED 6" TO 12" INCHES WHERE THERE HAS BEEN SOIL COMPACTION. THIS WILL HELP INSURE A GOOD BOND BETWEEN THE TOPSOIL AND SUBSOIL. THIS PRACTICE IS PERMISSIBLE ONLY WHERE THERE IS NO DANGER TO UNDERGROUND UTILITIES (CABLES, IRRIGATION SYSTEMS, ETC.).

4. SOIL COMPACTION RESULTING FROM LAND GRADING ACTIVITIES CAN IMPACT THE INFILTRATION RATE OF THE SOIL. RESTORATION OF COMPACTED SOILS THROUGH DEEP TILLAGE (6" TO 12") AND THE ADDITION OF ORGANIC MATTER MAY BE REQUIRED IN PLANNED PERVIOUS AREAS TO ENHANCE THE INFILTRATION RATE OF THE DISTURBED SOIL. THIS PRACTICE IS PERMISSIBLE ONLY WHERE THERE IS NO DANGER TO UNDERGROUND UTILITIES (CABLE, IRRIGATION SYSTEMS, ETC.).

5. TO PREVENT COMPACTION OF THE SUBSOIL WHICH WILL REDUCE ITS INFILTRATION CAPACITY, BASINS SHOULD BE EXCAVATED WITH LIGHT EARTH MOVING EQUIPMENT, PREFERABLY WITH TRACKS OR OVER-SIZED TIRES RATHER THAN THE NORMAL RUBBER TIRES. ONCE THE FINAL CONSTRUCTION PHASE IS REACHED, THE FLOOR OF THE BASIN SHALL BE DEEPLY TILLED WITH A ROTARY TILLER OR DISC HARROW AND SMOOTHED OVER WITH A LEVELING DRAG OR EQUIVALENT GRADING EQUIPMENT.

6. FOR BASINS, ANNUAL TILLING OPERATIONS MAINTAIN INFILTRATION CAPACITY. THESE TILLED AREAS SHOULD BE RE-VEGETATED IMMEDIATELY TO PREVENT EROSION. DEEP TILLING CAN BE USED TO BREAKUP CLOGGED SURFACE LAYERS FOLLOWED BY REGARDING AND LEVELING. SAND OR ORGANIC MATTER CAN BE TILLED INTO THE BASIN FLOOR TO PROMOTE A RESTORED INFILTRATION CAPACITY. SEDIMENT REMOVAL PROCEDURES SHOULD NOT BE UNDERTAKEN UNTIL THE BASIN IS THOROUGHLY DRY. THE TOP LAYER SHOULD BE REMOVED BY LIGHT EQUIPMENT TO PREVENT COMPACTION. THE REMAINING SOIL CAN BE RETILED AND DISTURBED VEGETATION REPLANTED.

MAP REFERENCES:
1. BOUNDARY AND TOPOGRAPHIC DATA AS PER "GRADING PLAN, 161 SOUTH MAPLE AVE.,LOT 13, BLOCK 1602, TWP. OF BERNARDS, SOMERSET CO.,N.J." DATED 04/03/19., PREPARED BY TEMPLIN ENGINEERING ASSOC.,AND SIGNE BY ROBER J. TEMPLIN, PE & LS. LIC.NO 25138. THIS TOPOGRAPHY SHOWN HEREON HAS BEEN GRAPHICALLY TIED TO THE GEOMETRY SHOWN ON THAT SURVEY.
2. WETLANDS LOCATION FLAGGING PER ENVIRONMENTAL TECHNOLOGY INC. DATED JUNE 2020
3. CONTOURS HAVE BEEN GERNERATED FROM FIELD WORK PERFORMED BY THIS OFFICE ON 6/12/20. VERTICAL DATUM OF THIS TOPOGRAPHIC STUDY IS BASED ON BENCHMARK FIRST FLOOR ELEV. 100.00'



PHOTOGRAPH LOCATION AND DIRECTION
③

TRANSECT WITH OBSERVATION POINTS (Example=T10P1)

SITE PLAN
SCALE: 1" = 20'

NOTE: ACTIVITIES UNDER GENERAL PERMIT NO.1 (NJAC 7:7A-7.1) ARE MAINTENANCE AND RECONSTRUCTION OF 6"PVC DRAIN PIPE DISCHARGE INTO ON-SITE POND

DUST CONTROL NOTES
1. ALL DUST CONTROL MEASURES ARE SUBJECT TO F.A.A. APPROVAL/REGULATIONS.
2. MULCHES–SEE STANDARD FOR STABILIZATION WITH MULCHES ONLY. NOT RECOMMENDED FOR AIRPORT APPLICATIONS.
3. VEGETATIVE COVER – SEE STANDARD FOR TEMPORARY VEGETATIVE COVER, PERMENANT VEGETATIVE CVER FOR SOIL STABILIZATION AND PERMENANT STABILIZATION WITH SOD.
4. SPRAY–ON–ADHESIVES–ON MINERAL SOILS. NOT EFFECTIVE ON MUCK SOILS. KEEP TRAFFIC OFF THESE AREAS.

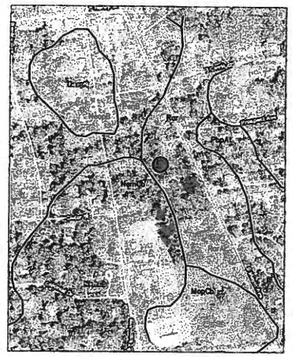
TABLE 16–1 : DUST CONTROL MATERIALS

MATERIAL	WATER DILUTION	TYPE OF NOZZLE	APPLY GAL./AC.
ANIONIC ASPHALT EMULSION	7:1	COARSE SPRAY	1200
LATEX EMULSION	12.5:1	FINE SPRAY	235
RESIN IN WATER	4:1	FINE SPRAY	300
POLYACRYLAMIDE (PAM) SPRAY ON OR DRY SPREAD	APPLY ACCORDING TO MANUFACTURER'S INSTRUCTIONS. MAY ALSO BE USED AS AN ADDITIVE TO SEDIMENT BASINS TO FLOCCULATE AND PRECIPITATE SUSPENDED COLLOIDS. SEE SEDIMENT BASIN STANDARD (PG. 25–1)		
ACIDULATED SOY BEAN SOAP STICK	NONE	COARSE SPRAY	1200

5. TILLAGE–TO ROUGHEN SURFACE AND BRING CLODS TO THE SURFACE. THIS IS A TEMPORARY MEASURE WHICH SHOULD BE USED BEFORE SOIL BLOWING STARTS. BEGIN PLOWING ON WINDWARD SIDE.
6. SPRINKLING – SITE IS SPRINKLED UNTIL SURFACE IS WET.
7. BARRIERS – SOLID BOARD FENCES, SNOW FENCES, BURLAP FENCES, CRATE WALLS, BALES OF HAY AND SIMILAR MATERIALS CAN BE USED TO CONTROL AIR CURRENTS AND SOIL BLOWING.
8. CALCIUM CHLORIDE – SHALL BE IN THE FORM OF LOOSE, DRY GRANULES OR FLAKES FINE ENOUGH TO FEED THROUGH COMMONLY USED SPREADERS AT A RATE THAT WILL KEEP SURFACE MOIST BUT NOT CAUSE POLLUTION OR PLANT DAMAGE. IF USED ON STEEPER SLOPES, THEN USE OTHER PRACTICES TO PREVENT WASHING INTO STREAMS OR ACCUMULATION AROUND PLANTS.
9. STONE – COVER SURFACE WITH CRUSHED STONE OR COARSE GRAVEL.

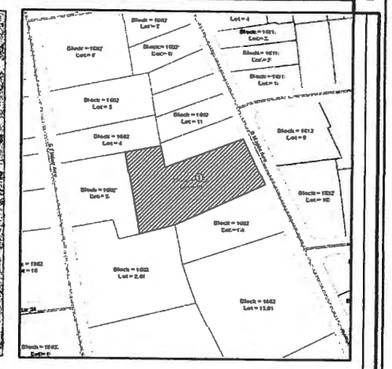
LEGEND

EXISTING SPOT GRADE	111.45 +
PROPOSED SPOT GRADE	112.40 ×
EXISTING 2' CONTOUR	104
EXISTING 10' CONTOUR	110
PROPOSED CONTOUR	108
SOIL EROSION FENCE	–x–x–
LIMIT OF DISTURBANCE	– – –
PROPOSED SWALE	–w–
WETLANDS FLAGGING/LIMIT	A–2

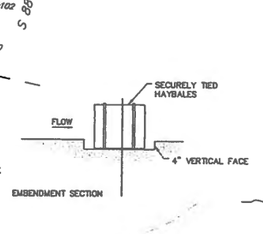


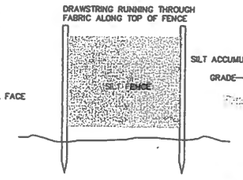
SOILS MAP
(N.T.S.)

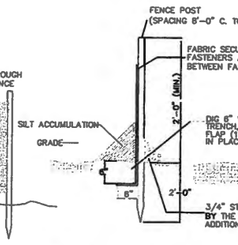
SOIL TYPE:
RarAr: Raritan silt loam, 0 to 3 percent slopes, rarely flooded



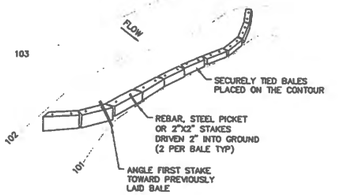
KEY MAP
NTS.



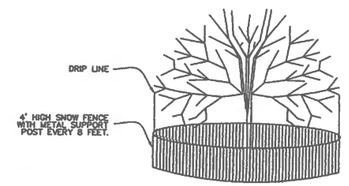




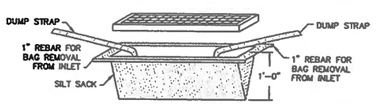
SILT FENCE DETAIL
(N.T.S.)

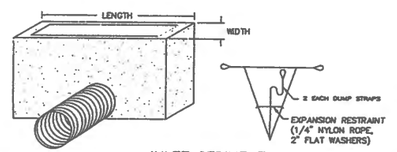


HAYBALE SEDIMENT BARRIER DETAIL
(N.T.S.)



TREE PROTECTION DETAIL
(N.T.S.)





INLET SEDIMENT PROTECTION DETAIL
(N.T.S.)

GENERAL NOTES:
1. THE ELEVATIONS OF THIS MAP ARE BASED UPON AN ASSUMED DATUM F.F. ELEV.=100.00, BENCH MARK.
2. PROJECT SITE IS KNOWN AS LOT 13, BLOCK 1602 ON THE TOWNSHIP TAX MAPS AND HAVING AN LOT AREA OF 1.682 ACS.
4. PROJECT SITE IS IN THE HIGHLAND PLANNING AREA AS PER NJGEOWEB.
5. PROJECT SITE IS LOCATED IN THE BASKING RIDGE HISTORICAL DISTRICT AS PER NJGEOWEB.
6. THERE ARE NO C1 WATERWAYS WITHIN 300 FT. OF POJECT SITE AS PER NJGEOWEB.
7. SOUTH MAPLE AVENUE IS A.K.A. COUNTY ROUTE 657.
8. TOPOGRAPHIC DATA AS PER "TOPOGRAPHIC STUDY, PREPARED FOR HEIDI LANDRY, LOT 13, BLOCK 1602,161 SOUTH MAPLE AVENUE, TOWNSHIP OF BERNARDS, SOMERSET CO. N.J." DATED 6/22/20. MAP PREPARED BY THIS OFFICE AND SIGNED BY CHARLES WORTHINGTON, PLS LIC.NO.34026.
9. THIS MAP IS INTENDED TO SHOW THE LIMIT OF DISTURBANCE ON THE PROJECT SITE. IT NOT FOR ANY CONSTRUCTION PURPOSE.

NO.	DATE	DESCRIPTION	BY
1.	7/12/21	NJDEP– GP–1 permit	LF

CLIENT:
HEIDI LANDRY
161 SOUTH MAPLE AVENUE
BASKING RIDGE, N.J. 07920
Ph.(989)600–7323

engineering inc. Careaga
382 Route 46 West, Fairfield Plaza Suite 5, Budd Lake NJ 07828
www.CareagaEngineering.com–Tel. (973) 448-0032 Tel (973) 448-0051
State Board of Professional Engineers and Land Surveyors
NJ C of A #24GA28059000
JEFFREY J. CAREAGA
PROFESSIONAL ENGINEER, N.J. LIC. NO. 35973

NJDEP PERMIT MAP
161 SOUTH MAPLE AVE.
LOT 13 BLOCK 1602
SITUATED IN:
TOWNSHIP OF BERNARDS
SOMERSET COUNTY NEW JERSEY

DATED	SCALES	PROJECT NUMBER
6/30/20	SHOWN	13539
DRAWN BY: LF	CHECKED BY: JJC	SHEET: 1 OF 1

EC

TOWNSHIP OF BERNARDS
PLANNING BOARD
APPLICATION STATUS FORM

Application No: PB21-004 Block: 704 Lot: 2 Zone: R-6

Applicant: MOREIRA, FERNANDO / ARAUJO, SONIA

Address of Property: 37 PARKVIEW AVENUE

Description: CONDITIONAL USE: APARTMENT

APPLICATION CHECKLIST

- ✓ Original + 3 copies of Application
- ___ Remaining 17 copies of Application
- ✓ W-9
- ✓ Site Inspection Form (A)
- ___ Ownership Form (B)
- ✓ Property Owners List (C)
- ✓ Tax Certification (D)
- ✓ Public Notice (E)
- ✓ Outside Agencies Form (F)
- — Tree Removal Form (G)
- — Contributions Form (H)
- ___ Engineering Plan/Plot Plan
- ✓ Architectural Plan
- ___ Survey
- ___ Wetlands Report/LOI
- ✓ Application Fee
- ✓ Escrow Deposit
- ✓ Imaging Fee
- — Tax Map Revision Fee
- ✓ Checklist

SCHEDULING

- 7.26.21 Original Submission Date
- 9.9.21 Completeness Deadline (45 days)
- ___ Incomplete Date
- ___ Resubmission Date
- ___ Date Complete
- ___ Time to Act (45/95/120 days)

HEARING

- ___ Notice to Property Owners
- ___ Date of Publication
- [redacted] Completeness Hearing
- 9.21.21 Public Hearing
- ___ Carried to Date
- ___ Decision - Approved/Denied
- ___ Resolution Memorialized
- ___ Resolution Published

DISTRIBUTION

- 7.26.21 Environmental Commission
- ___ Fire Official
- ___ LCFAS
- ___ Police

NOTES

ADDITIONAL INFO

TOWNSHIP OF BERNARDS
PLANNING BOARD
APPLICATION STATUS FORM

(APP ALSO REQUIRES "C")

Application No: PB21-004 Block: 704 Lot: 2 Zone: R-6

Applicant: MOREIRA, FERNANDO / ARAUJO, SONIA

Address of Property: 37 PARKVIEW AVENUE

Description: CONDITIONAL USE: APARTMENT

APPLICATION CHECKLIST

- ✓ Original + 3 copies of Application
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- ✓ Architectural Plan
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- ___ Wetlands Report/LOI
- ✓ Application Fee
- ✓ Escrow Deposit
- ✓ Imaging Fee
- — Tax Map Revision Fee
- ✓ Checklist

SCHEDULING

- 7.26.21 Original Submission Date
- 9.9.21 Completeness Deadline (45 days)
- ___ Incomplete Date
- ___ Resubmission Date
- ___ Date Complete
- ___ Time to Act (45/95/120 days)

HEARING

- ___ Notice to Property Owners
- ___ Date of Publication
- ~~8.17.21~~ Completeness Hearing
- 9.21.21 Public Hearing
- ___ Carried to Date
- ___ Decision - Approved/Denied
- ___ Resolution Memorialized
- ___ Resolution Published

DISTRIBUTION

- 7.26.21 Environmental Commission
- ___ Fire Official
- ___ LCFAS
- ___ Police

NOTES

APPENDIX D, ARTICLE III

Checklist

Application for Approval of a Variance Pursuant to NJSA 40:55D-70(c)

Important: Each item must be marked Submitted, Not Applicable or Waiver Requested

No.	Item	Submitted	Not Applicable	Waiver Requested
1	A completed application form and checklist.	✓		
2	A certificate from the tax collector indicating that taxes are paid.	✓		
3	All required application and escrow deposit fees.	✓		
4	Names and addresses of property owners within 200' of the subject property, as disclosed by current tax records and identified by block & lot numbers.	✓		
5	A plot plan or survey accurately depicting the entire subject property and all existing buildings, structures, driveways, patios, etc.	✓		
6	Sketch of all proposed improvements on the plot plan or survey, with dimensions of improvements and distances to property lines.	✓		
7	Calculations of existing & proposed lot coverage percentages.	✓		
8	Architectural sketches (floor plan and elevations) of the proposed improvements.	✓		
9	Photographs of the property in the location of the proposed improvements.	✓		
10	A wetlands delineation or wetlands absence determination prepared by a qualified consultant and verified by a letter of interpretation from the New Jersey Department of Environmental Protection, if required pursuant to Section 21-14.1.a		✓	
11	The locations of percolation tests and a copy of the written approval of the tests and locations from the Bernards Township Health Department, if the application involves a new dwelling and sewage disposal is to be handled by an individual septic system.		✓	
12	Delineations of existing and proposed stream buffer conservation areas and stream buffer management plans, if required pursuant to Section 21-14.4.b.		✓	
13	Existing topography, proposed grading, and proposed stormwater infiltration measures in accordance with §21-42.1.f.2(b), shown on the plot plan or survey, if 1,000sf or more of new impervious area is proposed.		✓	

Fernando Moreira
Sonia Araujo
37 Parkview Avenue
Basking Ridge, New Jersey 07920
fdmoreira99@gmail.com
araujosonia0@gmail.com
(973) 868-1540
(201) 410-7754

August 11, 2021

David Schley, PP, AICP
Township Planner
277 South Maple Avenue
Basking Ridge, New Jersey 07920

Cyndi Kiefer
Secretary to the Planning Board and Zoning Board of Adjustment
277 South Maple Avenue
Basking Ridge, New Jersey 07920

Dear Mr. Schley and Ms. Kiefer,

On November 6th, 2020, we, the undersigned, purchased the single-family residence at 37 Parkview Ave., Basking Ridge, NJ 07920. The residence has an existing apartment located on the lower level/basement of the residence with a kitchen, a living room, one bedroom, one bathroom, a laundry area, and a private entrance (please refer to the pictures and floor plan drawings submitted as part of the application accompanying this statement). The apartment was built by the prior owner of the residence without the required zoning permits. Accordingly, we have filed an application to make a request of the Planning Board for conditional use approval of this existing apartment so that it can be legalized for occupancy by the mother (i.e., Francelina Araujo) of one of the owners and principal occupants (i.e., Sonia Araujo) of the single-family residence.

We understand that the proposal also requires a "c" variance from §21-22.1.b.2(a) of the *Revised General Ordinances of the Township of Bernards 1984*, which states the following:

> No more than one required parking space for single-family detached dwelling units on lots of 30,000 square feet or more in area shall be located in a front yard.

We are filing this letter as an addendum to the submitted application to also make a request of the Planning Board for a "c" variance from the requirement in §21-22.1.b.2(a) that no more than one parking space for the single-family dwelling at 37 Parkview Ave. be located in a front yard. A completed "c" variance checklist (Appendix D, Article III) is appended to this letter, along with a plan/map showing locations of existing structures and driveways on adjacent lots and lots across the street from the property at 37 Parkview Ave., calculations of existing lot coverage and proposed lot coverage, and photographs of the property in the location of the proposed improvements.

Please do not hesitate to contact us at (201) 410-7754 or araujosonia0@gmail.com or fdmoreira99@gmail.com if you have any questions or wish to discuss the variance relief request described in this letter.

Thank you for your consideration.

Sincerely,

Fernando Moreira

Sonia Araujo

TOWNSHIP OF BERNARDS
2021 PLANNING BOARD APPLICATION

[ ] Minor Subdivision
[ ] Major Subdivision - Preliminary
[ ] Major Subdivision - Final
[X] Conditional Use
[ ] Site Plan - Preliminary
[ ] Site Plan - Final
[ ] Informal Review
[ ] Other (specify): _____

---

1. APPLICANT: Fernando Moreira and Sonia Araujo

Address: 37 Parkview Avenue, Basking Ridge, NJ 07920

Phone: (home) N/A (work) (201)410-7754 (mobile) (973)868-1540

Email (*will be used for official notifications*): fdmoreira[illegible]@gmail araujosonia@gmail

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

Address: Same as above

Phone: Same as above Email (*will be used for official notifications*): Same as above

3. ATTORNEY: None

Address: N/A

Phone: N/A Email (*will be used for official notifications*): N/A

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

Name: Kitchens and Bathrooms by Billy T/A Vasilios Maglaras Profession: General Contractor

Address: 40 Harter Road, Morristown, NJ 07960

Phone: (973)223-1845 Email (*will be used for official notifications*): billy.maglaras@gmail

See additional sheet at the end of this application for other professionals

5. PROPERTY INFORMATION: Block(s): 104 Lot(s): 2 Zone: _____

Street Address: 37 Parkview Ave, Basking Ridge NJ 07920 Total Area (*square feet/acres*): Dwelling: 3157 sq. ft Property: 1 acre

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

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? [X] No [ ] Yes (*if yes, explain*) _____

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

[X] No [ ] Yes (*if yes, explain and attach copy*) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: The house at 37 Parn
iew is a single family residence with 2 floors. The residence has 1 existing apartment on the lower
vel/basement of the residence. The apartment has a kitchen, living room, one bedroom, one bathroom, laundr
rea and private entrance. The apartment will be occupied by the mother of an owner and principal occupan
e Sonia Araujo) of the residence. A request for conditional use approval of the existing apartment is made

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (*include Ordinance section no.*): to the Board
The Owner-applicants are filing this application pursuant to Subsection 21-12.4 of
the Revised General Ordinances of the Township of Bernards 1984 and Ord. # 1429
5-29-2001, amended, to make a request of the Planning Board for Conditional
Use Approval of the existing apartment described in Item #9 above.

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: To the best of ou
owledge, the existing apartment meets all applicable requirements for conditional use approval. The
partment currently measures 750 sq.ft. and there are no plans to increase the apartment's total flo
rea. The total floor area of the residence is 3157 sq. ft. which includes 650 sq.ft. from a near complete
fice/rec room converted from a previous garage into living space for the residence's princupal occupa

12. NOTARIZED SIGNATURES (***ALL APPLICANTS AND OWNERS MUST SIGN***): The apartment only occup
23% of the residence's
total floor area and
will be occupied by the
owner's
mother.

APPLICANT(S) SIGN HERE:

I/we, Sonia Araujo and Fernando Moreira 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): Sonia Araujo and

Sworn and subscribed before me, this 26 day of JULY, 2021.

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

2021 Planning Board Application, Continued
Additional sheet for other professionals

OTHER PROFESSIONALS (*Engineer, Architect, etc. Attach additional sheet if necessary*):
Name: Jack Paruta
Profession: Architect
Address: 39 Woodland Road, Chatham, New Jersey 07928
Phone: (973) 647-4627
Email (*will be used for official notifications*): bmacdonald@fjraia.com

Fernando Moreira
Sonia Araujo
37 Parkview Avenue
Basking Ridge, New Jersey 07920
fdmoreira99@gmail.com
araujosonia0@gmail.com
(973) 868-1540
(201) 410-7754

July 20, 2021

Cyndi Kiefer
Secretary to the Planning Board and Zoning Board of Adjustment
277 South Maple Avenue
Basking Ridge, New Jersey 07920

Dear Ms. Kiefer,

On November 6th, 2020, we, the undersigned, purchased the single-family residence at 37 Parkview Ave., Basking Ridge, NJ 07920. The residence has an existing apartment located on the lower level/basement of the residence with a kitchen, a living room, one bedroom, one bathroom, a laundry area, and a private entrance (please refer to the pictures and floor plan drawings submitted as part of the application accompanying this statement). The apartment was built by the prior owner of the residence without the required zoning permits. Accordingly, we are filing an application to make a request of the Planning Board for conditional use approval of this existing apartment so that it can be legalized for occupancy.

We understand that Subsection 21-12.3 of the *Revised General Ordinances of the Township of Bernards 1984* [Ord. #585, § 405A] sets forth specific requirements for an apartment within a single-family residence that have to be met in order for the Planning Board to approve an application for a conditional use approval. To the best of our knowledge and that of our architect and general contractor (see the application form for information regarding these professionals), the apartment referenced in the preceding paragraph is in full compliance with the requirements for the particular use as set forth below:

1. There is only one apartment in the single-family residence and it is located on the lower level/basement of the principal building.

2. The existing apartment occupies less than 25% of the total floor area of the residence (i.e., the principal building). The apartment currently measures 750 square feet. The total floor area of the residence is 3,157 square feet, which includes 650 square feet from a near-complete office/recreation room that has been converted from a previous garage into additional living space for the residence's principal occupants (i.e., please refer to the lower level "man-cave" in the floor plan drawings submitted as part of the application accompanying this statement -- this conversion under permit number 20210486 is nearly complete). Therefore, the existing apartment only occupies approximately 23% of the total floor area of the residence. The apartment's total floor area/footprint will not be increased. In fact, once we are permitted to undertake construction inside the apartment,

the small laundry area will be converted into an open-air covered entryway, further reducing the apartment's total floor area to 665 square feet.

3. There is adequate parking available for all occupants of the principal residential use and the apartment in the residence's existing driveway. For details regarding the driveway, please refer to the copy of the property survey submitted as part of the application accompanying this statement.

4. The exterior appearance of the principal structure will not be substantially altered or its appearance as a single-family residence changed. The application to the Planning Board is for conditional use approval of an *existing* apartment and, therefore, the exterior of the residence will not be affected.

5. To the best of our knowledge, the size of the existing apartment conforms to FHA minimum unit size by bedroom count.

6. The occupant of the apartment will be limited to the mother (i.e., Francelina Araujo) of one of the owners and principal occupants (i.e., Sonia Araujo) of the single-family residence.

7. If the premises are granted approval for conditional use, the owners will certify annually, on a form provided by the Zoning Official, that the conditions for the conditional use are still being satisfied.

Thank you for your consideration.

Sincerely,

Fernando Moreira

Sonia Araujo

SUBMIT 21 COPIES TOTAL FORM A

TOWNSHIP OF BERNARDS
PLANNING BOARD / BOARD OF ADJUSTMENT

SITE INSPECTION CONSENT FORM

Applicant: Fernando Moreira

Block: 704 Lot: 2

Street Address: 37 Parkview Ave. Basking Ridge

I, Fernando Moreira, owner of the above property, hereby acknowledge that, upon determination of completeness of the application, a site inspection may be scheduled with the Board for a mutually convenient date and time. I hereby authorize members of the Planning Board/Board of Adjustment and their representatives and consultants to enter onto the property at the time of the site inspection for the purpose of evaluating the application.

Signature: Date: 3/7/21

ADDENDUM TO THE BERNARDS TOWNSHIP PLANNING BOARD APPLICATION

APPROVALS REQUIRED BY LOCAL, COUNTY, STATE AND OTHER AGENCIES

PERMITS	APPLICABLE	N/A	PENDING	RECEIVED
Somerset County Planning Bd.* **		✓		
Somerset County Road Opening Permit		✓		
Bernards Sewerage Authority		✓		
NJDEP: a) Stream encroachment		✓		
b) Filing Floodplain		✓		
c) Other		✓		
Army Corp of Engineers:		✓		
a) Section 404		✓		
b) Other		✓		
NJDOT:		✓		
a) Road opening permit		✓		
b) Drainage permit		✓		

****All applications for subdivision or site plan, whether Preliminary, Final, Minor or Major, must be submitted to Somerset County Planning Board by the applicant and proof of submittal must be received by Bernards Township prior to the scheduling of the application for the first hearing before the Bernards Township Planning Board.**

Applicant's Engineer **PE Number** **Date**

Brunswick Surveying, Inc.

Land Surveyors

61 Stelton Road • Piscataway, New Jersey 08854
732.752.0100 • Fax 732.752.0101
email: brunswick.surveying@gmail.com

Robert M. Horvath, L.S. Jonathan A. Stuhl, L.S. Jay A. Stuhl, Jr., L.S.

Legal Description
N/F Fernando Moreira and Sonia Araujo
Block 704 Lot 2
Township of Bernards-Somerset County, NJ

Beginning at a point at the intersection of the northeasterly line of Parkview Avenue with the southeasterly line of Morristown Road (AKA US Route 202) and thence,

1. Along the northeasterly line of Parkview Avenue, S. 27 degrees 07 minutes 00 seconds E. 160.00' to a point and thence,

2. N. 59 degrees 03 minutes 00 seconds E. 196.69' to a pipe and thence,

3. N. 16 degrees 59 minutes 20 seconds W. 180.00' to a point along the southeasterly line of Morristown Road and thence,

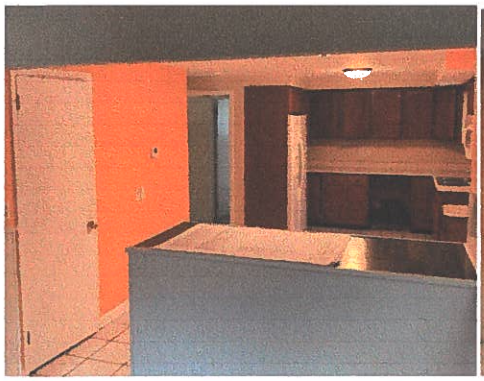
4. Along the southeasterly line of Morristown Road, curving to the right in a southwesterly direction, having a radius of 2,897.93' and an arc length of 229.99' to the point or place of beginning.

The above described lands are known as Lot 2 in Block 704 as shown on the current Official Tax Maps of the Township of Bernards.

Premises more commonly known as 37 Parkview Avenue.

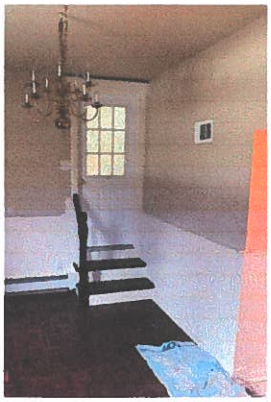
The above description is in accordance with a survey prepared by Brunswick Surveying, Inc. dated 10/23/2020 as File No. 1595-20.

Robert M. Horvath
New Jersey Land Surveyor No. 27476









APPENDIX G, ARTICLE III
Checklist
Application for Conditional Use Approval of a Home Office or an Apartment Within a Single Family Dwelling
(See Section 21-12 for details)
Important: Each item must be marked Submitted, Not Applicable or Waiver Requested

No.	Item	Submitted	Not Applicable	Waiver Requested
1	A completed application form and checklist.	✓		
2	A certificate from the Tax Collector indicating that taxes are paid.	✓		
3	All required application and escrow deposit fees.	✓		
4	Names and addresses of property owners within 200 feet of the subject property, as disclosed by current tax records and identified by block and lot numbers.	✓		
5	A statement describing the use and confirming that all conditional use requirements shall be met.	✓		
6	A site plan drawn to scale and showing:		✓	
	a. Locations and dimensions of existing and proposed buildings.		✓	
	b. Locations and dimensions of existing and proposed parking areas.		✓	
	c. Locations and details of proposed landscaping, lighting and signs.		✓	
	d. Existing and proposed vehicular and pedestrian circulation.		✓	
	e. Location of existing structures and driveways on adjacent lots and lots across the street from the subject property.		✓	
	f. If additional impervious surfaces are proposed, methods of stormwater management must be identified.		✓	
7	Floor plans identifying the total floor area and the floor area to be occupied by the conditional use.	✓		

[Ord. #1429, 5-29-2001, amended]

REFERENCES: DEED BK 1640 PG 190;
TOWNSHIP OF BERNARDS TAX MAPS

DEED 1"=30'

LOT 1.02

N 16°59'20" W 180.00'

O/L

0.3'IN

CHAIN LINK FENCE

FR. SHED

0.3'IN

O/L

PIPE FND

CHAIN LINK FENCE

BLOCK 704 (TM)
LOT 2 (TM)

MORRISTOWN ROAD
(AKA U.S. ROUTE 202)
(66' ROW)

L = 229.99'
R = 2897.93'

MAC DRIVEWAY

24.6'

24.6'

29.0'

CO

WOOD DECK

AC

42.3'

33.8'

2 STORY FR.
DWELLING NO. 37

24.4'

27.3'

CHIM

44.5'

43.8'

CONC P. W/ ROOF

PAVER WALK

57.7'

N 59°03'00" E 196.69'

LOT 3

GARDEN W/ TIES

BRICK PILLAR

POB

S 27°07'00" E 160.00'

PARKVIEW AVENUE
(40' ROW)

"A written Waiver and Direction Not to Set Corner Markers has been obtained from the ultimate user pursuant to P.L. 2003,c.14 (N.J.S.A.45:8-36:3) and N.J.A.C.13:40-5.1(d)."

B
S
I

Brunswick Surveying Incorporated
Licensed Land Surveyors
61 Stelton Road Piscataway, New Jersey 08854
Phone(732) 752-0100 Fax(732) 752-0101

PLAN OF SURVEY

Fernando Moreira and Sonia Araujo
Township of Bernards
Somerset County, New Jersey
Block 704 Lot 2

Certificate of Authorization No. 24GA27940000

Drawn by DMF Job No. 1595-20 Date 10/23/2020
Checked by RMH Sheet No. Scale 1"=30'

I hereby certify this survey to:
Fernando Moreira and Sonia Araujo; Warranty Title Agency, Inc.; Chicago Title Insurance Company; Anthony J. Peterpaul, Esq.; Peterpaul & Clark; Quicken Loans, LLC, ISAOA

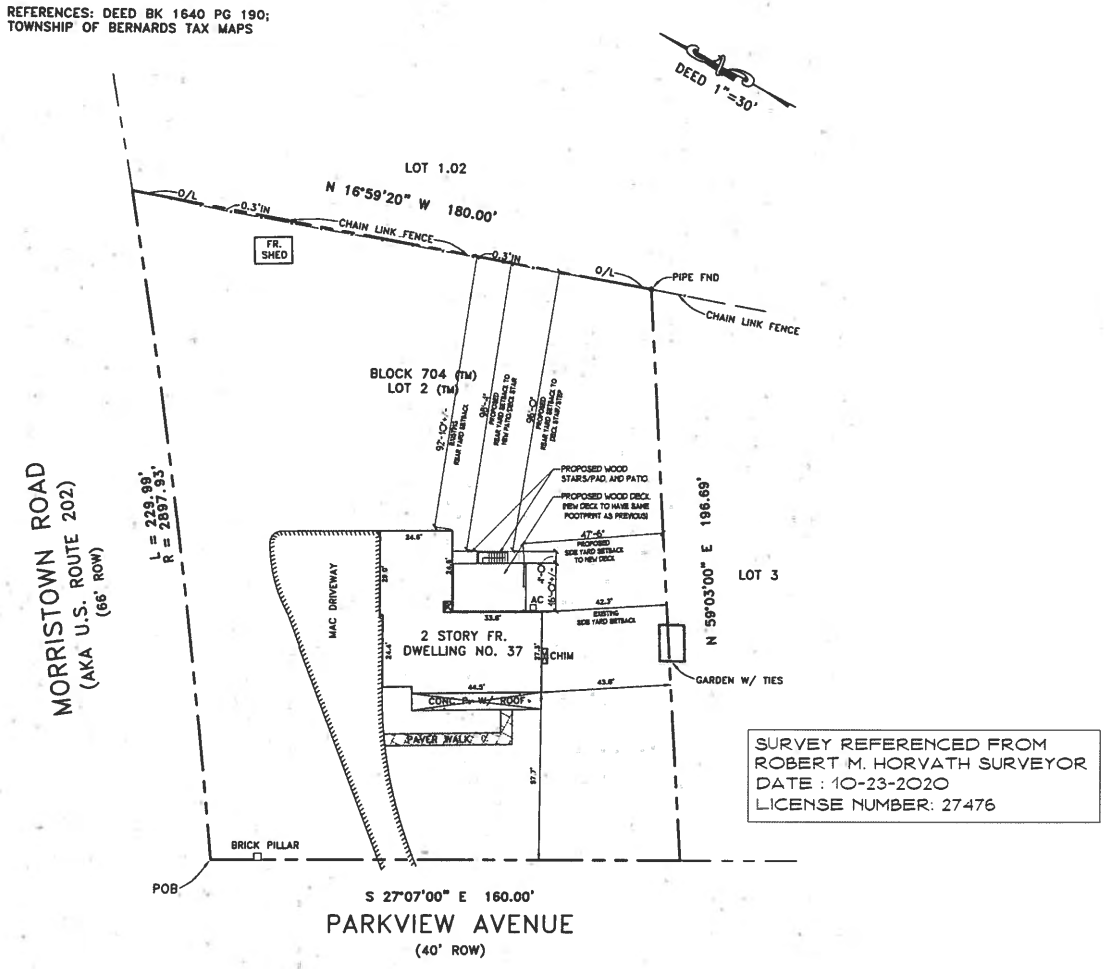
☑ ROBERT M. HORVATH
New Jersey Land Surveyor No. 27476

☐ JAY A. STUHL, JR.
New Jersey Land Surveyor No. 36762

☐ JONATHAN A. STUHL
New Jersey Land Surveyor No. 43314

TITLE# WT20-330

1 AERIAL MAP - 200' ADJACENT PROPERTIES TO 37 PARKVIEW AVENUE
SCALE: 1"=60'-0"



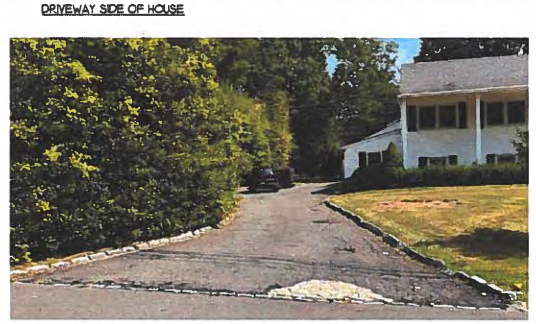
2 EXISTING SITE SURVEY W/ PROPOSED RENOVATIONS
SCALE: 1"=30'-0"


FRONT OF HOUSE


REAR OF HOUSE


SIDE OF HOUSE


DRIVEWAY SIDE OF HOUSE


STREET PHOTO W/ TREES/BUSHES ALONG DRIVEWAY

3 SITE PHOTOS - EXISTING EXTERIOR PHOTOS OF HOUSE
SCALE: N.T.S.

37 PARKVIEW AVENUE - BLOCK 704 / LOT 2			
	REQUIRED	EXISTING	PROPOSED
LOT SIZE	N/A	1.24 AC / 35,002 S.F.	N.C.
LOT FRONTAGE	N/A	180'	N.C.
LOT DEPTH	N/A	229'	N.C.
MAX. BLDG. COVERAGE	N/A	2,402 S.F./6.8%	N.C.
MAX. IMPERVIOUS COVERAGE	15%	5,830 S.F./16.0% (INCLUDES DRIVE, WALK AND EXIST. DECK/PATIO)	5,722 S.F./15.4% (INCLUDES ALL THE EXIST. PLUS NEW PORTION OF PATIO AND NEW DECK STAIR)
FRONT YARD SETBACK	N/A	57.7'	N.C.
SIDE YARD SETBACK COMBINED	N/A	42.3'/108.3'	N.C.
REAR YARD SETBACK	N/A	92'-8"	N.C.
MAX. BLDG. HEIGHT	N/A	22'-10"+/-	N.C.

4 SITE REQUIREMENTS -
SCALE: N.T.S.

PROPOSED
APARTMENT APPROVAL
- 37 PARKVIEW AVENUE
BASKING RIDGE, NJ 07920

BUILDING INFORMATION
JURISDICTION: BASKING RIDGE, NJ SOMERSET COUNTY
BLOCK / LOT: 704 - LOT 2
NUMBER OF BUILDINGS: 1
BUILDING HEIGHT: 22'-10"+/- FT
NUMBER OF STORIES: 2
LAND USE : R - SINGLE FAMILY DETACHED

ZONING MAP:
LOT AREA : 35,002SF - 1.24 AC

APPLICANT:
FERNANDO MOREIRA & SONIA ARAUJO
37 PARKVIEW AVENUE
BASKING RIDGE, NJ 07920

CHAIRMAN SIGNATURE DATE

SECRETARY SIGNATURE DATE

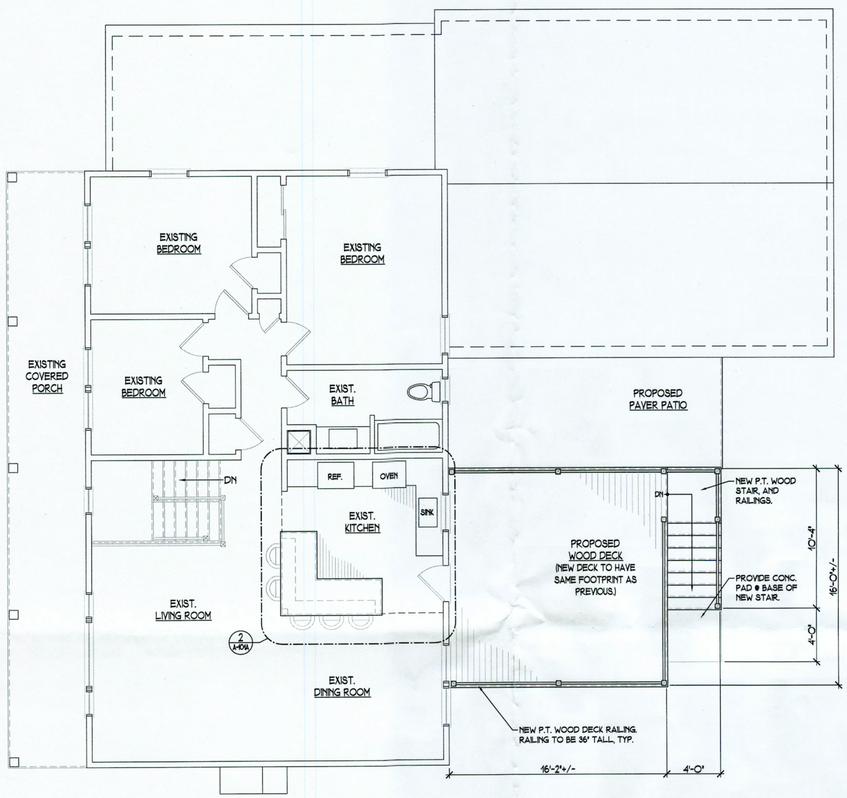
ENGINEER SIGNATURE DATE

JACK PARUTA
39 WOODLAND RD.
CHATHAM, NJ
- ARCHITECT
C#: 973.647.4627

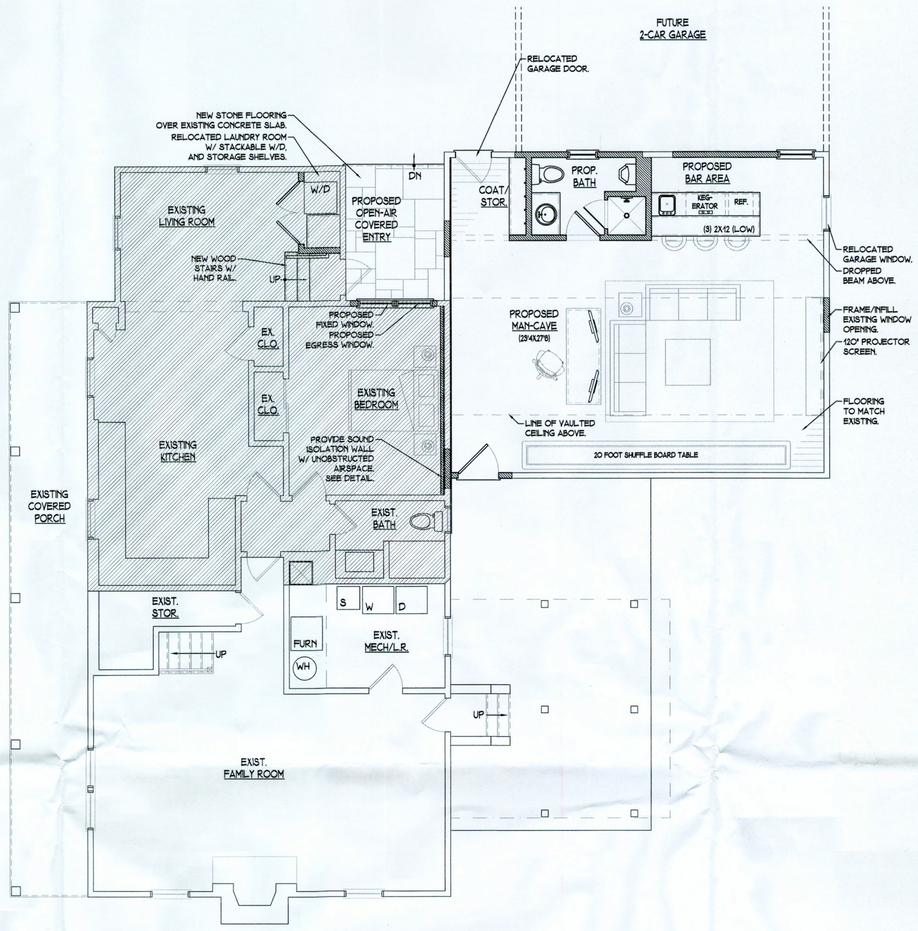
PROPOSED KITCHEN RENOVATION FOR:
MOREIRA RESIDENCE
37 PARKVIEW AVENUE
BASKING RIDGE, NEW JERSEY 07920

NJ LIC. NO. 21AI01779000

DRAWN BY:	CHECKED BY:
DRAWING: BUILDING INFORMATION	
REVISIONS: -VARIANCE SUBMISSION	DWG. NO. T-101
DATE 08.10.2021	SCALE AS INDICATED
SHEET 1 OF 1	PROJ. NO. -



1 EXISTING UPPER LEVEL W/ PROPOSED RENOVATIONS - 1,133SF
SCALE: 3/16" = 1'-0"



2 EXISTING LOWER LEVEL W/ PROPOSED RENOVATIONS - 2,024SF
SCALE: 3/16" = 1'-0"

SQUARE FOOTAGE TABLE		
SPACE/LOCATION	EXISTING	PROPOSED
FIRST FLOOR	1,133 SQFT.	1,133 SQFT. (NO CHANGE)
BASEMENT (MINUS GARAGE)	1,374 SQFT.	2,024 SQFT. (W/ MAN-CAVE)
APARTMENT	750 SQFT.	665 SQFT. (MINUS L.R.)
TOTAL PROPOSED SQFT.	-	3,157 SQFT. (BOTH FLOORS)
APARTMENT MAXIMUM ALLOWED SQFT.		25% OF 3,157SF = 790 SQFT.

WALL LEGEND

- PROPOSED 6" EXTERIOR WALLS W/ 4" INTERIOR WALLS, U.O.N.
- EXISTING WALLS TO REMAIN
- LINE OF HEADER/CLIP ABOVE
- LINE OF WALLS BELOW.

JACK PARUTA
39 WOODLAND RD.
CHATHAM, NJ
- ARCHITECT
C#: 973.647.4627

PROPOSED KITCHEN RENOVATION FOR:
MOREIRA RESIDENCE
37 PARKVIEW AVENUE
BASKING RIDGE, NEW JERSEY 07920

NJ LIC. NO. 21AI01779000

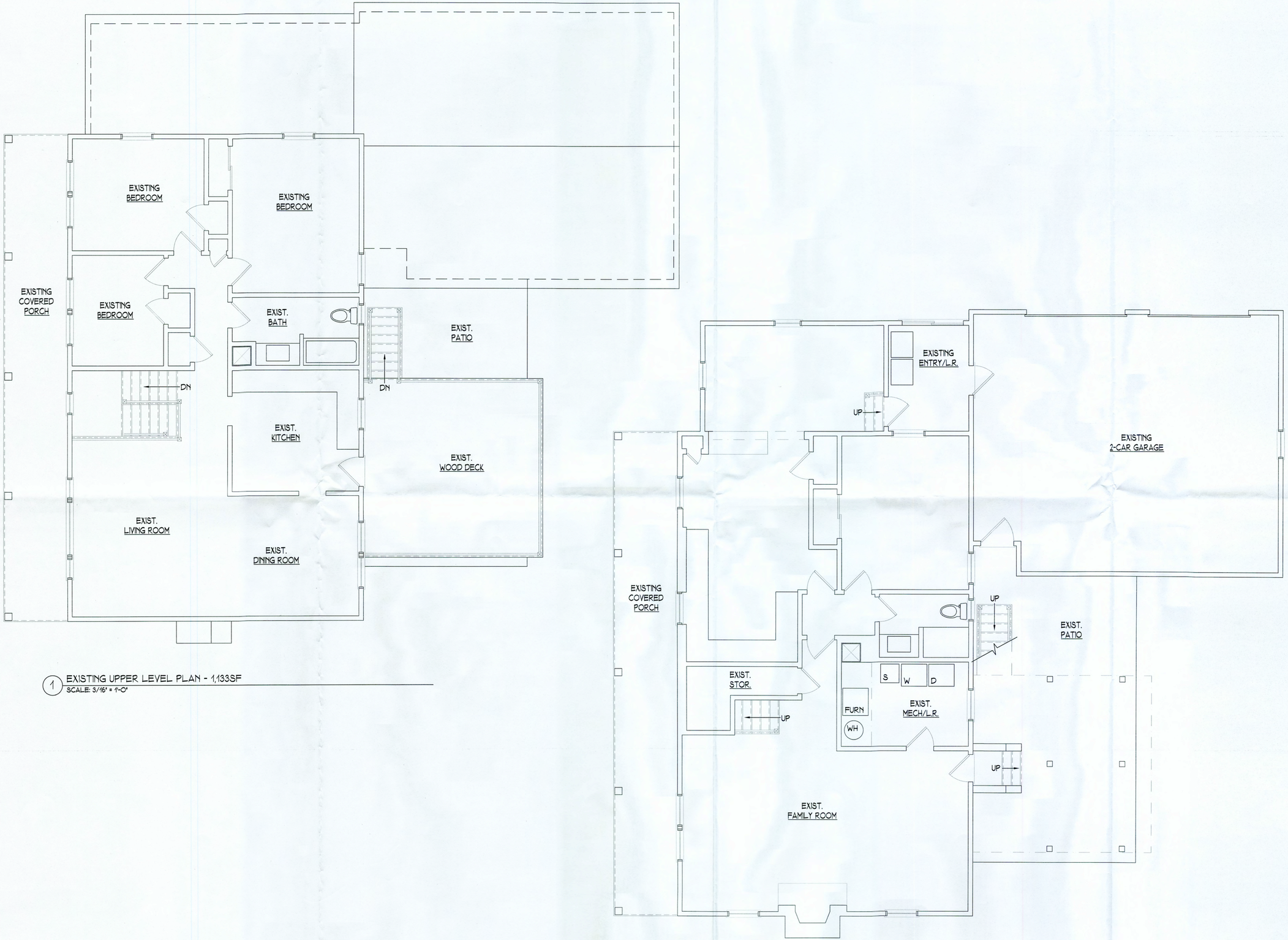
DRAWN BY: | CHECKED BY:

DRAWING: PROPOSED PLANS

REVISIONS | DWG. NO. A-101

DATE 06.13.2021 | SCALE AS INDICATED

SHEET 1 OF 2 | PROJ. NO. -



1 EXISTING UPPER LEVEL PLAN - 1,133SF
SCALE: 3/16" = 1'-0"

2 EXISTING LOWER LEVEL PLAN - 1,374SF W/O GARAGE
SCALE: 3/16" = 1'-0"

JACK PARUTA
39 WOODLAND RD.
CHATHAM, NJ
- ARCHITECT
C#: 973.647.4627

PROPOSED KITCHEN RENOVATION FOR:

MOREIRA RESIDENCE

37 PARKVIEW AVENUE
BASKING RIDGE, NEW JERSEY 07920

NJ LIC. NO. 21AI01779000

DRAWN BY:

CHECKED BY:

DRAWING
EXISTING CONDITIONS

REVISIONS

DWG. NO.
EX-101

DATE 06.13.2021

SCALE AS INDICATED

SHEET 2 OF 2

PROJ. NO. -

Sept mtg

TOWNSHIP OF BERNARDS
ZONING BOARD OF ADJUSTMENT
APPLICATION STATUS FORM

Application No: ZB21-025 Block: 2401 Lot: 4 Zone: E-3

Applicant: PYRAMID HEALTHCARE INC.

Address of Property: 170 MT. AIRY ROAD

Description: INTERPRETATION OF E-3 ZONE USE

APPLICATION CHECKLIST

- ✓ Original + 16 copies of Application
- ___ W-9
- ___ Site Visit Consent (A)
- ___ Ownership Form (B)
- ___ 200' Property Search List (C)
- ___ Tax Certification (D)
- ___ Notice to be Served/Published (E)
- ___ Dimensional Statistics Form (F)
- ___ Contributions Disclosure Form (G)
- ___ Engineering Plan/Plot Plan
- ___ Architectural Plans
- ___ Survey
- ___ Photographs
- ___ Wetlands Report/LOI
- ✓ Application Fee
- ✓ Escrow Deposit
- ✓ Imaging Fee
- ___ Tax Map Revision Fee
- ___ Checklist

SCHEDULING

- 6.14.21 Original Submission Date
- ___ Completeness Deadline (45 days)
- ___ Incomplete Date
- ___ Resubmission Date
- ___ Date Complete
- ___ Time to Act (45/95/120 days)

HEARING

- ___ Notice to Property Owners
- ___ Date of Publication
- ___ Completeness Hearing
- 9.16.21 Public Hearing
- ___ Carried to Date
- ___ Decision - Approved/Denied
- ___ Resolution Memorialized
- ___ Resolution Published

DISTRIBUTION

- 6.15.21 Environmental Comm
- ___ Fire Official
- ___ LCFAS
- ___ Police

NOTES

TOWNSHIP OF BERNARDS
2021 ZONING BOARD OF ADJUSTMENT APPLICATION

[ ] Bulk or Dimensional ("c") Variance
[ ] Use ("d") Variance
[ ] Conditional Use ("d") Variance
[ ] Floor Area Ratio, Density, or Height ("d") Variance
[ ] Site Plan - Preliminary / Final
[ ] Appeal of Zoning Officer's Decision
[X] Interpretation of Zoning Ordinance
[ ] Minor Subdivision
[ ] Major Subdivision - Preliminary / Final
[ ] Other (specify): _____

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1. APPLICANT: Pyramid Healthcare, Inc.

Address: 271 Lakemont Park Boulevard, Altoona, PA 16602

Phone: (home) 814-940-0407 ext. 1409 (work) Fax- 814-946-1402 (mobile) _____

Email (*will be used for official notifications*): dpertile@pyramidhc.com

2. OWNER (*if different from applicant*): 170 Mt Airy Road LLC

Address: 1300 Mount Kemble Avenue, Morristown, NJ 07962

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

3. ATTORNEY: Thomas Malman, Esq., Day Pitney LLP

Address: One Jefferson Road, Parsippany, NJ 07054

Phone: 973-966-8179 Email (*will be used for official notifications*): tmalman@daypitney.com

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

Name: N/A Profession: _____

Address: _____

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

5. PROPERTY INFORMATION: Block(s): 2401 Lot(s): 4 Zone: E-3 Zone

Street Address: 170 Mount Airy Road Total Area (*square feet/acres*): 365,468.4SF/8.39AC

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

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? [X] 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:
Please see attached Request for Interpretation of Zoning Ordinance

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (*include Ordinance section no.*):
N/A

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION:
Please see attached Request for Interpretation of Zoning Ordinance

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

APPLICANT(S) SIGN HERE:

I/we, Pyramid Healthcare, Inc. 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 9th day of June, 2021

_____
Notary

Commonwealth of Pennsylvania - Notary Seal
David A. Pertile, Notary Public
Blair County
My commission expires June 23, 2024
Commission number 1269345
Member, Pennsylvania Association of Notaries

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, 170 Mt Airy Road LLC the owner(s) of the property described in this application,

hereby authorize Pyramid Healthcare, Inc. 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): Edward B Dentch 6-9-2021

Sworn and subscribed before me, this 9th day of June, 2021.

Carrie Ann Dufault
Notary

CARRIE ANN DUFAULT
ID # 2397958
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 7/6/2025

REQUEST FOR INTERPRETATION OF ZONING ORDINANCE

1. Introduction.

The Applicant, Pyramid Healthcare, Inc. ("Pyramid Health"), is the contract purchaser of property located at 170 Mount Airy Road and designated as Block 2401, Lot 4 on the Township's tax map (the "Property"). The Property is situated in the E-3 Office Zone ("E-3 Zone"). Pyramid Health plans to convert the existing building on the Property to a Residential Substance Use Disorders Treatment Facility (the "Facility"), governed by the regulations set forth in N.J.A.C. 10:161A-1 *et seq.* (the "Regulations"). Pyramid Health proposes to operate a licensed residential inpatient drug and alcohol treatment facility for adults, including medication-assisted treatment plans, with approximately 160 beds, providing all client transportation, and offering outpatient services (the "Proposed Use"). The Facility will be staffed by approximately 130 people, consisting of physicians, nurses, counselors, and administrative support staff. Pursuant to the Regulations, the Facility would be licensed by and subject to the direct supervision of the New Jersey Department of Human Services, Division of Mental Health and Addiction Services ("DMHAS"). For the reasons set forth below, the Applicant submits that the Proposed Use is permitted by the applicable provisions of the Township's Land Development Ordinance ("LDO"). The Applicant is seeking an interpretation pursuant to N.J.S.A 40:55D-70b to confirm that understanding.

2. Applicable LDO Provisions.

The permitted uses in the E-3 Zone include, among other things, "hospitals and medical clinics." LDO, §21-10.5(e). Unfortunately, the LDO does not specifically define the words "hospitals" or "medical clinics." A review of the LDO indicates that the term "hospital" is referenced in the context of "animal hospital" as "a place where animals or pets are given medical or surgical treatment..." LDO, §21-3.1. Although this definition is specific to animals and not humans, a logical inference is that a "hospital" for humans would be a place where humans are given "medical or surgical treatment." As described above, the Proposed Use includes medication-assisted treatment for drug and alcohol abuse disorders, falling within this meaning of "hospital."

The term "medical clinic", although nor defined, is referenced in the LDO within the permitted uses applicable to the P-5 Public Purpose Zone ("P-5 Zone"). Therein, the LDO excludes "a medical clinic, medical practice or medical facilities operated by physicians or other state recognized or licensed medical or health practitioners..." from the permitted uses in the P-5 Zone. LDO, §21-10.10(f)(1)(d). Based on the plain meaning of "medical clinic," as discussed in more detail below, the operation of the Facility by "physicians or other state recognized or licensed medical or health practitioners" leads to the conclusion that the Proposed Use is consistent with the manner in which "medical clinics" are viewed by the LDO.

3. Applicable Law:

A) Plain Language.

The "clearest indication of [an ordinance's] meaning is its plain language." *In re Tenure Hearing of Young*, 202 NJ 50, 63 (2010). There is a strong presumption that the legislative purpose

is expressed in the "ordinary meaning of the words used." *Ardestani v. INS,* 502 U.S. 129, 136 (1991). The plain language of section 10.5(e) permits "hospitals" and "medical clinics." The word "hospital" is not defined by the LDO, but its plain meaning is "an institution where the sick or injured are given medical or surgical care." *Merriam-Webster Online Dictionary* (2021), https://www.merriam-webster.com/dictionary/hospital (last accessed on May 19, 2021). The word "medical clinic" is also not defined by the LDO. Separating the two wods, the plain meaning of "medical" is "of, relating to, or concerned with physicians or the practice of medicine" and "clinic" is either "a facility (as of a hospital) for diagnosis and treatment of outpatients" or "a group practice in which several physicians work cooperatively." *Merriam-Webster Online Dictionary* (2021), https://www.merriam-webster.com/dictionary/medical (last accessed on May 19, 2021); *see also Merriam-Webster Online Dictionary* (2021), https://www.merriam-webster.com/dictionary/clinic (last accessed on May 19, 2021).

Given these common dictionary definitions and the logical inferences from the use of those words in the LDO noted above, it is clear that the Proposed Use falls under the plain meaning of both "hospitals" and "medical clinics." The Facility will be licensed and subject to the direct supervision of the DMHAS. The Proposed Use contemplates the treatment of patients, providing a "broad range of primary and supportive services, including identification, assessment, diagnosis, counseling, medical services, psychological services and follow-up, provided to persons with alcohol, tobacco and other drug problems." N.J.A.C. 10:161A-1.3. The Proposed Use also includes detoxification services, which is "the provision of care, short-term and/or long-term, prescribed by a physician and conducted under medical supervision, for the purpose of withdrawing a person from a specific psychoactive substance in a safe and effective manner according to established written medical protocols." N.J.A.C. 10:161A-1.3. As such, the Facility is an institution that provides medical care to sick individuals struggling with substance use disorders, employing physicians to provide diagnosis and treatment of clients, falling under the plain meaning of both "hospitals" and "medical clinics."

B) Case Law, Regulations, and Statutes.

In *Scerbo v. Bd. of Adjustment of City of Orange*, 121 N.J. Super. 378 (Law. Div. 1972), the court considered whether a residential narcotic rehabilitation and treatment center, governed by N.J.S.A. 26:2G-21 *et seq.*, is a "hospital," which qualified as an "institutional" use under the terms of the applicable zoning ordinance. A copy of the case is attached hereto as **Exhibit A**. The court found that the statutory definition of "narcotic and drug abuse treatment center" means:

> "Any establishment, facility or institution, public or private, whether operated for profit or not, which primarily offers, or purports to offer, maintain, or operate facilities for the residential or outpatient diagnosis, care, treatment, or rehabilitation of two or more nonrelated individuals, who are patients as defined herein..."

Scerbo, 121 N.J. Super. at 385 (citing N.J.S.A. 26:2G-22(a)).

Further, the *Scerbo* court recognized the definition of "patient" as follows:

> "[A] person who is addicted to, or otherwise suffering physically or mentally from the use, or abuse of, narcotic drugs and who requires continuing care of a narcotic and drug abuse treatment center."

Scerbo, 121 N.J. Super. at 386 (citing N.J.S.A. 26:2G-22(b)).

The court relied upon the plain meaning of the word "hospital," noting that "**the proposed treatment center falls within [the] definition of a hospital, namely, an institution for the reception and care of sick persons**," and analyzed the recognition of drug addiction as a disease, noting:

> "Drug addiction is a 'disease' recognized as such by the Legislature. *See* N.J.S.A. 26:2G-1. 'Most frequently, it connotes physical dependence, resulting from excessive use of certain drugs.' Report of the President's Commission on Law Enforcement and Administration of Justice (February, 1967), The Challenge of Crime in a Free Society, at 212... A recent editorial in the New Jersey Law Journal observes that 'the drug disease is fast become a plague and, if left unchecked, may soon destroy our society,' and that 'The problem is primarily a social and medical one.' Drug Abuse-A Challenge to Our Society,' 95 N.J.L.J. 484 (May 18, 1972)."

Scerbo, 121 N.J. Super. at 386 (emphasis added).

Although N.J.S.A. 26:2G-21 *et seq*. was revised in 2017 to reflect a change in the definition referenced in the *Scerbo* case, this *de minimus* change in terminology from "narcotic and *drug abuse* treatment center" to "narcotic and *substance use disorder* treatment center" does not impact the *Scerbo* analysis. Despite the change in terminology, the definitions of the treatment center and patient remain the same as analyzed by the *Scerbo* court, and as such, the same conclusion must be reached here; that the Proposed Use falls within the plain meaning of "hospitals and medical clinics," and is therefore permitted within the E-3 Zone.

As stated above, the Facility is governed by the regulations outlined in N.J.A.C. 10:161A-1 *et seq*. The Regulations apply to substance (alcohol and drug) abuse treatment facilities that provide residential substance use disorders treatment, and constitute the basis for the licensure and inspection of such facilities by the DMHAS. N.J.A.C. 10:161A-1.1(a). A license is defined in the Regulations as "a certificate of approval pursuant to N.J.S.A. 26:2G-21 *et seq*., and/or a license pursuant to N.J.S.A. 26:2B-7 *et seq*." and a licensed facility provides "care for the treatment of substance use disorders, for 24 or more consecutive hours to two or more clients who are not related to the governing authority or its members by marriage, blood or adoption." N.J.A.C. 10:161A-1.3.

In *Scerbo*, the court indicated that no treatment center is permitted to operate within the State of New Jersey without first obtaining a certificate of approval, subject to the direct supervision of the Commissioner of Health. *Scerbo*, 121 N.J. Super. at 386-387 (citing N.J.S.A. 26:2G-23 and N.J.S.A. 26:2G-25). Additional safeguards provided in the legislation are as follows:

> "The commissioner shall make or cause to be made such inspection of the premises, for which a certificate of approval has been issued, from time to time, as he may

> deem necessary to be assured that the holder thereof and the premises comply at all times with the provisions of this act and the rules and regulations promulgated, and the minimum standards established hereunder."

Scerbo, 121 N.J. Super. at 387 (citing N.J.S.A. 26:2G-26). The current statutory provisions are substantially the same as relied upon by the court in *Scerbo*. This licensure and inspection scheme, and the services provided by a licensed facility, fall within the plain meaning of "hospitals and medical clinics."

The statutory authority for the controlling regulations further supports the interpretation of "hospitals and medical clinics" to include the Proposed Use. Under N.J.S.A. 26:2B-7, the Legislature has determined that it is sound public policy to provide persons with an alcohol use disorder with a "continuum of treatment in order that they may lead lives as productive members of society." Treatment includes services and programs for "the care or rehabilitation of intoxicated persons and persons with alcohol use disorder, including, but not limited to, medical, psychiatric, psychological, vocational, educational, recreational, and social services and programs." N.J.S.A. 26:2B-8. Such facilities providing services must be individually licensed or approved.

4. Conclusion.

In conclusion, the Township's LDO, State regulations, and applicable case law all support the position that the Proposed Use is a "hospital" or "medical clinic" that are permitted in the E-3 Zone.

EXHIBIT A

KeyCite Yellow Flag - Negative Treatment
Distinguished by Perlmart of Lacey, Inc. v. Lacey Tp. Planning Bd., N.J.Super.A.D., November 25, 1996

121 N.J.Super. 378
Superior Court of New Jersey,
Law Division.

Italo D. SCERBO et al., Plaintiffs,
v.
BOARD OF ADJUSTMENT OF the CITY OF ORANGE et al., Defendants.

Nov. 30, 1972.

Synopsis
Zoning case. The Superior Court, Milmed, J.S.C., held that residential narcotic rehabilitation and treatment center was 'hospital' and qualified as 'institutional' use under local zoning ordinance; and that local zoning board had jurisdiction to grant variance where application and notice clearly specified relief which was being applied for even though no specific mention that 'variance' was being sought was made.

Determination affirmed.

West Headnotes (3)

[1] **Zoning and Planning** Hospitals, Clinics, and Other Health-Related Facilities

Residential narcotic rehabilitation and treatment center under supervision of Commissioner of Health was "hospital," and qualified as "institutional" use under local zoning ordinance. N.J.S.A. 26:2G-21 et seq.

4 Cases that cite this headnote

[2] **Zoning and Planning** Application
Zoning and Planning Notice

Local zoning board had jurisdiction to grant variance where application and notice clearly specified relief which was being applied for even though no specific mention that "variance" was being sought was made. N.J.S.A. 40:55-44.

3 Cases that cite this headnote

[3] **Zoning and Planning** Prisons, jails, and rehabilitative institutions

Evidence sustained decision of zoning board of adjustment granting special exception and variance for use of premises as residential drug rehabilitation center. N.J.S.A. 40:55-39.

4 Cases that cite this headnote

Attorneys and Law Firms

***379** ****208** Thomas Grant Bernard, East Orange, for plaintiffs (Bernard, Netchert & Silverlieb, East Orange, attorneys).

Alfonso C. Viscione, Orange, for defendants Board of Adjustment of City of Orange, George Miles, Kevin Donnelly, Carl Zazzaro, William Cassini and Oliver Swenson, as members of the Board of Adjustment.

Barry R. Mandelbaum, Newark, for defendant D.A.R.E., Inc. (Mandelbaum, Mandelbaum & Gold, Newark, attorneys).

Opinion

MILMED, J.S.C.

[1] [2] Is a residential narcotic rehabilitation and treatment center which is governed by the ***380** provisions of L.1970, c. 334 (N.J.S.A. 26:2G-21 et seq.) a 'hospital,' qualified as an 'institutional' use under the terms of the local zoning ordinance? Did the local zoning board have jurisdiction to grant a variance where the notice to neighboring property owners under N.J.S.A. 40:55-44 made no specific mention that a 'variance' was being sought? These are two of the principal issues to be determined in this action in lieu of prerogative writs.

Defendant D.A.R.E., Inc. (Drug Addiction Rehabilitation Enterprise, Inc.) seeks to operate within the City of Orange a narcotic and drug abuse rehabilitation and treatment center

governed by the provisions of L.1970, c. 334 (N.J.S.A. 26:2G-21 et seq.). The essential facts are not in dispute. In the spring of 1971 it (D.A.R.E.) purchased the premises at 19 High Street in Orange, New Jersey, formerly occupied by the Y.W.C.A. The land is irregularly shaped, and the building is a three-story frame structure. In the fall of 1971 it submitted to the building inspector of the City of Orange plans for extensive alteration of the building. By letter of October 14, 1971 the building inspector advised, among other things, that it was his interpretation of the local building code,

* * * that the building when altered according to your plans, would meet the requirements of the Building Code of the City of Orange, for Institutional Uses.

This is to further advise you that the Building Department will issue a permit according to the plans submitted by you, subject to the provisions of an amendment to the Zoning Ordinance of the City of Orange number 1083-G13-M10, which we had discussed as of this date.

Application was thereupon made by D.A.R.E. to the Board of Adjustment of the City of Orange for approval of the issuance of a permit for the alteration of 19 High Street, Orange, New Jersey, for a residential treatment center pursuant to local zoning ordinance amendment 1083-G13-M10. The application sets forth a brief description of ***381** the premises [1] and discloses that 'The lot size is less than one acre and the principal structure is located within 25 feet of side property lines.'

Notice was given by certified mail, return receipt requested, to the property owners within 200 feet of the subject property. The notice sets forth the time and place of public hearing before the board of adjustment 'for approval pursuant to Zoning Ordinance Amendment No. 1083-G13-M10 for the use of the subject premises as a residential treatment center for drug dependent persons,' and also a brief description of the premises owned by Drug Addiction Rehabilitation Enterprise, Inc. and located at 19 High Street, Orange, New Jersey.

After extensive hearings before the board of adjustment, the board on February 9, 1972 adopted its resolution, which is sought to be set aside in this action, granting a special exception (N.J.S.A. 40:55-39(b)) and variance (N.J.S.A. 40:55-39(c)) for the use of the premises as a residential drug rehabilitation center, a facility 'to fulfill the need for resident drug ****209** rehabilitation for all Orange drug dependent residents who would qualify and benefit from this form of rehabilitation.'

In its resolution the board found, in substance, that D.A.R.E. satisfies the definition of a hospital under the amendatory zoning ordinance 1083-G13-M10; that it is an institution for the rehabilitation of drug dependent persons; that it is a therapeutic community; that the existing building on the premises has been used as a residence since 1917; that 'it would be impractical and a hardship to insist on the side yard requirement as there would be no way to conform with the requirements of the ordinance'; that D.A.R.E. 'attempted to purchase additional property and has been refused'; that by reason of the exceptional situation and condition of the property, strict application of the lot size ***382** and side yard requirements of the ordinance 'would undoubtedly deprive the owners of the reasonable use of the property and result in exceptional and undue hardship upon the owners of the property' and be contrary to the public good; that there is a drug abuse problem in Orange; that D.A.R.E.'s drug rehabilitation program meets a pressing social need; that implementation of the educational program provided by D.A.R.E. would aid in combating the growing abuse of drugs; that D.A.R.E. maintains adequate safeguards, including the screening of proposed residents and the maintenance of a drug-free atmosphere, with frequent urine testing and half-hour bed checks; that fear that the general welfare, morals, health and safety of the surrounding neighborhood would be adversely affected has been unsubstantiated; that the City of Orange would not be acting 'for the common good if it allowed fear of the problem to hinder adequate and reasonable attempts at its solution'; that the relief applied for by D.A.R.E. 'can be granted without substantial detriment to the public good and will not be detrimental to the health, safety and general welfare of the community, and that the drug problem in Orange is real, critical and urgent and requires immediate attention'; that the premises are located in a residential area, as the term is used in amendatory zoning ordinance 1083-G13-M10; that D.A.R.E. has met the burden of proof imposed upon it under the terms of this amendatory zoning ordinance and N.J.S.A. 40:50-39(c), and that adequate notice was given to the neighboring property owners. By its resolution, the board granted the application by D.A.R.E. for the use of the premises as a drug rehabilitation center, as well as relief from the minimum lot size and side yard requirements of the amendatory ordinance, I.e. ordinance 1083-G13-M10.

Plaintiffs contend that an 'institutional' use is not permitted in the applicable 'B-3 High-Rise Apartment and Office District' in the municipality; that the proposed residential treatment

center for drug dependent persons is not ***383** a 'hospital' qualified as an 'institutional' use under the terms of the applicable local zoning ordinance, I.e., ordinance 1083-G13-M10; that if the proposed center is an 'institutional' use, D.A.R.E., in regard to this facility, is governed by, and has not complied with, the provisions of N.J.S.A. 30:11-1 et seq., relating to the licensing and regulation of private hospitals; that the notice by D.A.R.E. to neighboring property owners under N.J.S.A. 40:55-44 was not adequate to provide the board of adjustment with jurisdiction to grant the variance; and that the action of the local board of adjustment in granting the special exception and variance was arbitrary, capricious and unreasonable. [2]

****210** It is undisputed that the property owned by D.A.R.E. at 19 High Street in Orange is located in a 'B-3 High-Rise Apartment and Office District' in the municipality. Article XIXA of the local zoning ordinance, which was added by amendment approved January 9, 1970, sets forth, among other things, the permitted and prohibited uses in this district. In specifying the uses permitted in the district, which include 'multi-family dwellings with a minimum height of six stories,' section 19A.1 declares that, 'This zone district allows the most intensive residential use in the City and business and professional offices.' Section 19A.2 prohibits in the district 'Combined apartment and office buildings * * * except that medical offices shall be allowed to occupy not over 10 per cent of the building floor space.'

***384** Describing the area surrounding the subject premises at the initial hearing before the board of adjustment, Anthony Church, an architect testifying in support of the application by D.A.R.E., pointed out that the building at 19 High Street would be in line with the surrounding buildings, and that

> From the street, as you face the building on the right-hand side is a high-rise brick apartment. To the left is the Orange Savings Bank, and across the street there is a doctor's office and there are stores. It is completely a commercial type area as far as that is concerned, and it completely blends as far as the area is concerned, and it would not be an eyesore as far as standing out as being an institution type building. There are commercial businesses, residences, and a high-rise, and it is completely a diversed area as far as that is concerned.

Ordinance 1083-G13-M10 of the City of Orange, approved May 6, 1964, referred to in the application of D.A.R.E. to the board of adjustment, also amends the local zoning ordinance. Section 1 defines 'Institutional Uses' as,

> Non-profit institutions limited to churches, schools teaching academic subjects, hospitals, public libraries, museums, art galleries and city buildings.

Section IV of this amendatory ordinance provides that 'Institutional uses may be located in any business or industrial zone,' and that 'Said uses are also permitted in Any residential zone.' (Emphasis added). The same section sets forth certain requirements to be met by every institutional use permitted in the city after the enactment of the amendment, including that there be 'a minimum lot size of 1 acre,' and that 'No principal structure shall be located within 25 feet of any side property line.' The section also provides: that an institutional use 'shall only be permitted as a 'special exception' pursuant to N.J.S.(A.) 40:55-39(b)'; that a site plan of the proposed use, including certain specific data, be submitted to the board of adjustment, and that sufficient additional data be provided as specified by the board of adjustment ***385** to enable the board to determine compliance with requirements of the zoning ordinance 'and to determine the best possible physical layout for the proposed use from the standpoint of its relationship to the general health, safety and welfare of the City of Orange.' Before approving the City of Orange.' Before approving itself or require proper guarantees that the location of the proposed use will not be detrimental to the public health, safety, morals and general welfare of the community.'

As indicated, by the express terms of the amendatory zoning ordinance referred to in the application by D.A.R.E. (ordinance 1083-G13-M10), an institutional use may be located or permitted in Any residential, business or industrial zone in the municipality if allowed by the municipal board of ****211** adjustment under the amendatory ordinance and as a 'special exception' pursuant to N.J.S.A. 40:55-39(b). 'Any' residential zone undoubtedly means and includes

a residential zone of whatever kind. The 'B-3 High-Rise Apartment and Office District' is essentially a residential zone in which the land use is limited to certain multi-family dwellings and professional and business uses. Any institutional use, as defined in ordinance 1083-G13-M10, may accordingly be located in such district when approved by the local board of adjustment pursuant to that ordinance.

The proposed residential narcotic rehabilitation and treatment center is a 'hospital,' and as such qualifies as an 'institutional' use under the terms of ordinance 1083-G13-M10. The parties concede that D.A.R.E. is governed by the provisions of L.1970, c. 334 (N.J.S.A. 26:2G-21 et seq.). That statute defines the term 'Narcotic and drug abuse treatment center,' as used in the legislation, to mean

> any establishment, facility or institution, public or private, whether operated for profit or not, which primarily offers, or purports to offer, maintain, or operate facilities for the residential or outpatient diagnosis, care, treatment, or rehabilitation of two or more nonrelated individuals, who are patients as defined herein, excluding, however, any hospital or mental hospital otherwise licensed by Title 30 of the Revised Statutes. (N.J.S.A. 26:2G-22(a))

***386** N.J.S.A. 26:2G-22(b) defines the word 'patient,' as used in the legislation, to mean

> a person who is addicted to, or otherwise suffering physically or mentally from the use, or abuse of, narcotic drugs and who requires continuing care of a narcotic and drug abuse treatment center.

A hospital is defined as 'An institution for the reception and care of sick, wounded, infirm, or aged persons; * * *.' Black's Law Dictionary (4th ed. 1951), at 871. See also, 41 C.J.S., Hospitals, s 1 at 331. The record before the board of adjustment clearly establishes that the proposed treatment center falls within this definition of a hospital, namely, an institution for the reception and care of sick persons. Drug addiction is a 'disease' recognized as such by the Legislature. See N.J.S.A. 26:2G-1. 'Most frequently, it connotes physical dependence, resulting from excessive use of certain drugs.' Report of the President's Commission on Law Enforcement and Administration of Justice (February, 1967), The Challenge of Crime in a Free Society, at 212. Dr. Eugene Sims, a physician, medical director of D.A.R.E., testifying before the board in support of the application, referred to drug addiction as 'the number one mental health problem in America.' A recent editorial in the New Jersey Law Journal observes that '* * * the drug disease is fast become a plague and, if left unchecked, may soon destroy our society,' and that 'The problem is primarily a social and medical one.' Drug Abuse-A Challenge to Our Society,' 95 N.J.L.J. 484 (May 18, 1972).

Under the applicable legislation, N.J.S.A. 26:2G-23, no narcotic and drug abuse treatment center is permitted to operate within the State except pursuant to a certificate of approval obtained from the Commissioner of the State Department of Health upon application made therefor pursuant to the terms of the statute (L.1970, c. 334). The trial brief submitted on behalf of D.A.R.E. indicates that such certificate has been applied for by it. Under such certificate, which is a prerequisite to its operation at the subject premises, ***387** D.A.R.E. would accordingly be under the supervision of the State Commissioner of Health and required to comply with the rules, regulations and minimum standards of treatment of patients as promulgated by the Commissioner. N.J.S.A. 26:2G-25. Additional safeguards are provided in the legislation. Thus, N.J.S.A. 26:2G-26 provides that

> ****212** The commissioner shall make or cause to be made such inspection of the premises, for which a certificate of approval has been issued, from time to time, as he may deem necessary to be assured that the holder thereof and the premises comply at all times with the provisions of this act and the rules and regulations promulgated, and the minimum standards established hereunder.

And N.J.S.A. 26:2G-27 provides, in part, that

> The commissioner after a hearing may deny, revoke, or suspend any certificate of approval granted under authority of this act to any person, firm, partnership, corporation or association violating the provisions hereof or the rules and regulations promulgated hereunder.

In regard to safeguards maintained at a D.A.R.E. operated residential treatment center, Dr. Sims explained his duties in connection with the operation of the D.A.R.E. residential treatment center on Littleton Avenue in Newark, stating:
My duties are, number one, to prevent the development of illness for the residents in the Therapeutic Community on Littleton Avenue in Newark, to treat illnesses and to provide for the necessary physical examinations performed on the applicants accepted for admission by the Newark Health Department.

I inspect the facility as to cleanliness, sanitation, ventilation and with particular reference to the sanitation of the cooking and dining facilities and as to the sleeping accommodation areas * * * And I'm also involved in the detoxification of the applicants to the Therapeutic Community prior to their acceptance in the program.

Dr. Sims also explained the urinalysis program at the institution, pointing out that urinalyses of residents are taken 'Two or three times a week as a rule, and whenever indicated.'

***388** The facility proposed to be conducted as a residential narcotic rehabilitation and treatment center by D.A.R.E. at 19 High Street in Orange, being a 'hospital' qualified as an 'institutional' use under the terms of the applicable local zoning ordinance and governed by the provisions of L.1970, c. 334 (N.J.S.A. 26:2G-21 et seq.), and accordingly under the supervision of the State Commissioner of Health, Does not come within the definition of a 'private hospital' as set forth in chapter 11 of Title 30 of the Revised Statutes, as amended, relating to the licensing and regulation of private hospitals. [3] In this respect, N.J.S.A. 30:11-8 provides in its opening paragraph:

> A private mental hospital, private nursing home, convalescent home or private hospital, for the purpose of this chapter, is defined as any institution, whether operated for profit or not, Which is not maintained, supervised or controlled by an agency of the government of the State or of any county or municipality, and which maintains and operates facilities for the diagnosis, treatment or care of 2 or more nonrelated individuals, who are patients as defined herein. (Emphasis added)

Neither the application filed by D.A.R.E. with the board of adjustment nor its notice to adjoining property owners used the term 'special exception' or 'variance.' In the circumstances of the case, the use of this exact terminology was not required. Here, both the application and the notice clearly specified the relief which was being applied for. The application sought approval of the issuance of a permit for the alteration of 19 High Street in Orange 'for a residential treatment center.' The application set forth a brief description of the ****213** premises and expressly stated that 'The lot size is less than one acre and the principal structure is located within 25 feet of side property lines.' The notice of hearing given by D.A.R.E. to the neighboring property ***389** owners was in compliance with N.J.S.A. 40:55-44. It also complied with the requirements of N.J.S.A. 40:55-53 that 'The notice shall contain a brief description of the property involved, its location, a concise statement of the matters to be heard and the date, time and place of such hearing.' [4] It set forth the date, time and place of the public hearing scheduled before the board, a brief description of the premises involved, its location, I.e., 19 High Street, Orange, New Jersey, and a concise statement of the matter to be heard before the board, I.e., '* * * the use of the subject premises as a residential treatment center for drug dependent persons.' In light of the contents of the application and notice, the board properly treated the application as if made both for a 'special exception' under ordinance 1083-G13-M10 and N.J.S.A. 40:55-39(b) and for a 'variance' under N.J.S.A. 40:55-39(c). Cf. Gougeon v. Stone Harbor, 52 N.J. 212, 218, 245 A.2d 7 (1968). Notice of the date, time and place of hearing and of the relief sought was also published in the Orange Transcript.

The notice provided was sufficient to alert the neighboring landowners to the relief sought by D.A.R.E. The essence of the notice was that board of adjustment action was requested to permit the use of premises located at 19 High Street in

Orange, New Jersey, as a residential treatment center for drug dependent persons. Any person opposed to or in favor of the proposed use was accordingly given adequate notice of the purpose of the hearing and of the subject of the hearing. See ***390** Healy v. Board of Appeals of Watertown, 356 Mass. 130, 248 N.E.2d 1 (Sup.Jud.Ct.1969), and Carson v. Board of Appeals of Lexington, 321 Mass. 649, 75 N.E.2d 116 (Sup.Jud.Ct.1947). See also Annotation, 'Construction and Application of Statute or Ordinance Provisions Requiring Notice as Prerequisite to Granting Variance or Exception to Zoning Requirement,' 38 A.L.R.2d 167, 229.

> Exact terminology is not required in zoning cases. Courts will treat the matter for what it really is, notwithstanding the terminology used. (Root v. City of Erie Zoning Board of Appeals, 180 Pa.Super. 38, 118 A.2d 297, 299 (Super.Ct.1955))

The initial hearing before the board of adjustment was held in compliance with the notice to neighboring property owners. At each hearing public announcement was made as to the time and place for the next meeting. It appears from the record before the board that full opportunity was afforded to any proponent or objector to be heard. The hearings before the board were in accord with the notices sent to the property owners situated within 200 feet of the subject property. As to these property owners the requirements of the statutes as to notice were met. See Kramer v. Bd. of Adjust., Sea Girt, 45 N.J. 268, 277, 212 A.2d 153 (1965).

The grant of a special exception under the terms of the local zoning ordinance and N.J.S.A. 40:55-39(b), and the grant of a variance under N.J.S.A. 40:55- 39(c), are each subject to the negative criteria set forth in N.J.S.A. 40:55-39, I.e., that

> No relief may be granted or action taken under the terms of this section unless such relief can be granted without **214 substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

And, the variance contemplated by N.J.S.A. 40:55-39(c) may be granted

> Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic ***391** conditions, or by reason of other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under the act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property * * *; provided, however, that no variance shall be granted under this paragraph to allow a structure or use in a district restricted against such structure or use.

Here, the essential findings of the board and its determination to grant the special exception and variance are well grounded in the extensive record before the board. The action of the board was not arbitrary, capricious or unreasonable, or in manifest abuse of its discretionary authority. There was no evidence before the board showing that allowing the proposed use of the premises as a residential narcotic rehabilitation and treatment center would 'substantially impair the intent and purpose of the zone plan and zoning ordinance.' Cf. Kunzler v. Hoffman, 48 N.J. 277, 285, 225 A.2d 321 (1966).

The proofs amply established that there is a drug abuse problem in Orange requiring the implementation of an effective drug rehabilitation and treatment program, and that the proposed institutional use is 'essential or desirable for the welfare of the community and its citizenry or substantial segments of it, * * *' and 'entirely appropriate and not essentially incompatible with the basic uses * * *' in the B-3 High-Rise Apartment and Office District in the area surrounding the subject promises. See Tullo v. Millburn Tp., 54 N.J.Super. 483, 490, 149 A.2d 620 (App.Div.1959).

Benjamin F. Jones, a commissioner of the City of Orange, testifying in support of the application, pointed out, that

I organized the Drug Abuse Council in the City of Orange with the hope that this organization would direct and establish an appropriate drug abuse program for the City. At the time of this organization our initial concern was to provide the earliest possible effective program for the problem that was upon us.

The Council investigated a number of areas that provided this type of service, and after these investigations and interrogations, we decided that D.A.R.E. was the program that came nearest to the program that we felt would meet our needs in Orange. We ***392** thought it would not be appropriate for the Drug Abuse Council to wait until such time as each of us became a so-called expert on drug abuse and then to initiate such a program. We recommended that a contract, renewable on an annual basis with D.A.R.E. be effected, * * *.

Joseph B. McCartney, Jr., an independent real estate apraiser, testifying in opposition to the application, commented that

> * * * There is, of course, a great deal of misunderstanding about what this is to be used for, nevertheless, the fear is there and the fear is real, and I do believe that if D.A.R.E. was allowed to use these premises for this reason, that it would be detrimental to the area. * * *

He stated that his 'personal belief' was

> * * * that if D.A.R.E. is located at 19 High Street, that people will be afraid to come into this area, that it will contribute to the decline of the area itself and the possible rebuilding of the area.

In commenting on the type of fear expressed to him he stated,

> ****215** 'They are afraid of drug addicts, they believe that drug addicts are harmful to them, that they are going to hurt them physically. They are afraid of them, and they don't want them there.

The record before the board, however, fails to substantiate such fears as applied to the proposed D.A.R.E. residential treatment center. According to Dr. Sims,
The addict in a good rehabilitation program is in a therapeutic community and cannot commit crimes. Other addicts who are out in the streets and maybe those who are just involved in the Out Reach Program, those are the ones that are committing the crimes. * * *

People have suggested that we try and put these centers out in the country, they will get more fresh air. It is like you are saying let's put a hospital out in the country, but the disease is in the cities and it is here in the streets of Orange, it is not out in the country. Let's have the treatment facilities available for the sick people where ever the people are sick.

The evidence before the board supports its finding that the municipality would not be acting '* * * for the common ***393** good if it allowed fear of the problem to hinder adequate and reasonable attempts at its solution.'

[3] In light of the critical problem of drug dependent persons existing in the municipality, the necessity of providing a drug rehabilitation center to meet their needs, and the exceptional situation and condition of the property, all referred to in the board's resolution, its finding that strict application of the lot size and side yard requirements of the zoning ordinance would result in exceptional and undue hardship upon the owner of the property and would be contrary to the public good, is eminently sound. The cited negative criteria set forth in N.J.S.A. 40:55-39 have been satisfied. The record before the board sufficiently demonstrates that exceptional and undue hardship, resulting from the exceptional shape of the property described in the application and the unavailability of adjacent or contiguous land with which to enlarge the premises, would be visited upon the applicant if an exception and variance were denied. Cf. 165 Augusta Street, Inc. v. Collins, 9 N.J. 259, 87 A.2d 889 (1952), and Gougeon v. Stone Harbor, Supra, and the same case at 54 N.J. 138, 253 A.2d 806 (1969).

In Bove v. Bd. of Adjust., Emerson, 100 N.J.Super. 95, 241 A.2d 252 (App.Div.1968), the court points out:

As stated in Kramer v. Bd. of Adjust., Sea Girt, Supra, 45 N.J., at p. 296, 212 A.2d 153, public bodies because of their peculiar knowledge of local conditions must be allowed wide latitude in their delegated discretion. See also Booth v. Bd. of Adjust., Rockaway Tp., 50 N.J. 302, 306, 234 A.2d 681 (1967). Furthermore, there is attached to a decision of the board a presumption of correctness, fairness and proper motive and the burden of proving otherwise is on the party attacking it. Kramer v. Bd. of Adjust., Sea Girt, Supra, 45 N.J., at p. 285, 212 A.2d 153; Ardolino v. Florham Park Board of Adjustment, Supra, 24 N.J. at p. 105, 130 A.2d 847; Yahnel v. Bd. of Adjust. of Jamesburg, 79 N.J.Super. 509, 517, 192 A.2d 77 (App.Div.1963), certification denied 41 N.J. 116, 195 A.2d 15 (1963); Holman v. Bd. of Adjustment, Norwood, Supra, 78 N.J.Super., at p. 79, 187 A.2d 605 (at 102, 241 A.2d at 256)

Plaintiffs have failed to sustain that burden.

This court is satisfied from the record before the zoning board of adjustment and the argument of counsel at the ***394** hearing in this action that the board properly reached its determination to grant the special exception and variance for the use of the premises as a residential drug rehabilitation center. The determination of the zoning board on the application of D.A.R.E. is affirmed.

All Citations

121 N.J.Super. 378, 297 A.2d 207

Footnotes

1 By dimensions, I.e., 71.61 243.14 126.78 72.86 54.67 170.10 .

2 In their complaint and at the pretrial conference plaintiffs additionally contended that the determination of the local zoning board should be set aside by reason of an alleged conflict of interest on the part of two members of the board of adjustment. However, that contention was withdrawn by plaintiffs at the hearing in this court after they had taken the depositions of the two members of the board upon oral examination.
No claim was asserted or relief sought by plaintiffs in their complaint in this action against defendant City of Orange. Accordingly, after hearing on motion, the application of the city for summary judgment in its favor dismissing the complaint as to it, was granted.

3 Functions transferred from the State Department of Institutions and Agencies to the State Department of Health by L.1971, c. 136, ss 19, 22 and 23 (N.J.S.A. 26:2H-19, 26:2H-22 and 26:2H-23).

4 High Street in Orange is a county road. Under the circumstances, notice of hearing before the local zoning board of adjustment was required to be given to the county planning board. N.J.S.A. 40:55-53. While this requirement was not complied with, the record filed in this action indicates that, subsequent to the zoning board resolution of February 9, 1972, the Planning Board of Essex County reviewed the application by D.A.R.E. and found 'no objection to this application.'