

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v3
Regular Meeting
August 5, 2020

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:30 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairman Breslin read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 9, 2020 and was electronically mailed to all those people who have requested individual notice.

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

OATH OF OFFICE

Mr. Warner administered the Oath of Office to Carl D. Cambria as a Regular Member, filling the unexpired four-year term of Michael Zaidel, expiring 12/31/23. Chairman Breslin expressed his appreciation to Mr. Zaidel for his years of service to the Board and to the community as a whole.

ROLL CALL:

Members Present: Breslin, Cambria, Eorio, Kraus, Pochtar, Tancredi
Members Absent: Genirs, Juwana
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the absences of Ms. Genirs and Mr. Juwana were excused.

NOMINATIONS FOR VICE CHAIRMAN

Chairman Breslin called for nominations for Vice Chairwoman of the Board for the remainder of 2020. Mr. Tancredi nominated Ms. Genirs. Ms. Pochtar seconded. There were no other nominations.

All in favor and carried that Ms. Genirs serve as Vice Chairwoman.

NOMINATIONS FOR VICE CHAIRMAN PRO-TEMP

Chairman Breslin called for nominations for Vice Chairman Pro-Temp of the Board for the remainder of 2020. Mr. Kraus nominated Mr. Tancredi. Mr. Cambria seconded. There were no other nominations.

All in favor and carried that Mr. Tancredi service as Vice Chairman Pro-Temp.

APPROVAL OF MINUTES

[June 11, 2020 – Special Meeting \(virtual\)](#) – On motion by Mr. Tancredi, seconded by Mr. Eorio, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence/recusal: Breslin, Cambria

[June 22, 2020 – Special Meeting](#) – On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence/recusal: Breslin, Cambria, Kraus

[July 8, 2020 - Regular Meeting](#) – On motion by Mr. Tancredi, seconded by Ms. Pochtar, all eligible in favor and carried, the minutes were adopted as *amended*. Abstention for absence: Cambria

APPROVAL OF RESOLUTIONS

[New York SMSA LP d/b/a Verizon Wireless; ZB20-001](#); Block 803, Lots 2, 3, 5, 6, and 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Use (d-1) Variance, Bulk Variances (approved) – Mr. Tancredi moved approval of the resolution as drafted. Mr. Eorio seconded.

Roll call:	Aye:	Eorio, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Breslin, Cambria, Kraus

Motion carried.

[Kangas, David C. & Kristine A.; ZB20-009](#); Block 2701, Lot 11; 134 South Alward Avenue; Bulk Variance (approved) – Ms. Pochtar moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call:	Aye:	Breslin, Eorio, Kraus, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Cambria

Motion carried.

[Reynolds, Scott/Ellison, Martha; ZB20-010](#); Block 5201, Lot 2; 36 Kensington Road; Bulk Variance; (approved) – Mr. Kraus moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call:	Aye:	Breslin, Eorio, Kraus, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Cambria

Motion carried.

MODIFICATION OF CONDITION

[LCB Senior Living Holdings II LLC](#); Block 2301, Lot 31; 219 Mount Airy Road; Extension of Time to Sign Plans; ZB19-010A

Present:	Brooke L. Kaplan, Esq., Attorney for the Applicant
	Robert Moschello, PE, Engineer for the Applicant

Brooke L. Kaplan, Esq., attorney with the firm of *Day Pitney LLP*, Parsippany, NJ entered her appearance on behalf of the Applicant. She gave a brief history of the application, noting that as a condition of approval, the Applicant is required to have all plans signed no later than August 6, 2020. She stated that because of Covid-19, there have been delays in processing the necessary paperwork and the Applicant is unable to meet that deadline. Although the initial request was for a six (6) month extension, the Applicant has decided to ask for a nine (9) month extension of time to have the plans signed (May 6, 2021). Mr. Warner opined that the Board may find that this situation is beyond the Applicant's control and that it would be reasonable to modify the condition to extend the deadline.

APPROVAL OF RESOLUTION

[LCB Senior Living Holdings II LLC; ZB19-010A](#); Block 2301, Lot 31; 219 Mount Airy Road; Extension of Time to Sign Plans; ZB19-010A (approved) - Mr. Tancredi moved to approve the resolution granting an extension of time to sign plans as requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Pochtar seconded.

Roll call:	Aye:	Breslin, Cambria, Eorio, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

[McCrone, Robert S. & Susan M.](#); Block 1302, Lot 26; 55 Decker Street; Bulk Variances; ZB20-011

Present: Robert S. and Susan M. McCrone, Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants and the Board's Professionals were duly sworn.

Robert S. McCrone, Applicant residing at 55 Decker Street, explained that in order to widen the existing driveway, variance relief for minimum side setback for a driveway is required. He stated that the current driveway is so narrow that two (2) cars cannot park side by side and that turning around in the driveway is difficult. His two sons will be driving shortly and widening the driveway would allow for all of the cars to park in the driveway and not on the street which is also very narrow. In addition, variance relief is required for an existing shed which currently violates the minimum rear and side yard setbacks. He testified that if the shed is moved to a conforming location, it would be in the middle of the back yard. He added that it is not visible from the adjacent property, 12 Mount Airy Road, because of the vegetation and that it has been in this location for almost 20 years with no complaints. Mr. McCrone testified that along the side of the proposed driveway expansion which is closest to 12 Mount Airy Road, there is a solid fence with landscaping which he plans to extend as far as possible. Finally, he stated that he would use belgium block curbing to ensure that the water runoff would now be directed to the street. He then addressed the comments made in memos from Mr. Schley, Mr. Quinn and the Environmental Commission to the satisfaction of the Board.

Hearing no further questions from the Board, Chairman Breslin opened the hearing to the public for questions or comments.

Roy F. Crego, 12 Mount Airy Road, was duly sworn by Mr. Warner and submitted **Exhibit O-1**, a 5-page compendium, into evidence. He testified that the gravel area of the driveway closest to his property is in violation of the side yard setback which has been an issue for many years. He also questioned the veracity of the information submitted in the application and opined that the proposed expansion would be out of character with the neighborhood and devalue his house. He asked that the Board deny the application in its entirety.

Mr. Crego entered into evidence, **Exhibit O-2** containing his April 2020 email exchanges with Nancy Koederitz, Township Zoning Officer, in which he asked her to inspect the Applicants' property for the driveway setback violation. Ms. Koederitz advised that since a variance application for this deviation had been filed the previous day, an inspection was not warranted.

Mr. Crego testified that he has not suffered any property damage because of the gravel parking area and confirmed that the Applicants' vehicles are always parked in their own yard.

Mr. Crego confirmed that he had removed a row of forsythia bushes which were along the fence but on his property and Mr. Kraus opined that they would have provided an additional visual buffer.

Hearing no further questions or comments from the public, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for both a "c(1)" or "hardship" variance and a "c(2)" or "benefits outweigh detriments" variance.

Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the variance relief requested subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Eorio seconded.

Roll Call:	Aye:	Breslin, Cambria, Eorio, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

PUBLIC HEARING

[Lincoln Avenue Gospel Hall](#); Block 8903 Lot 36; 3265 Valley Road; Preliminary/Final Site Plan Conditional Use Variance (d-3), Bulk Variances; ZB20-006

Present: Frederick B. Zelle, Esq., Attorney for the Applicant
William G. Hollows, PE, Engineer for the Applicant
James E. Druckenmiller, Applicant/Trustee

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Hollows and the Board's Professionals were duly sworn.

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant and gave a brief description of the project which includes renovation of an existing single-family dwelling into a house of worship. He noted that in addition to site plan approval, several dimensional variances and exceptions, a "d(3)" or "condition use" variance is required since the project, although a permitted conditional use in the zone, could not meet several of the condition standards.

James E. Druckenmiller, 9 Lexington Drive, Warren, NJ, introduced himself as a trustee of the Lincoln Avenue Gospel Hall which is a non-profit organization and is affiliated with the Plymouth Brethren Christian Church. He testified that this location would be a satellite facility to the main church located in Warren, NJ. It would be used on Sunday mornings for prayer and worship services and on Monday evenings for a worship service. There would be audible prayer, meditation and singing possibly with a microphone but no musical equipment or electronics. He testified that on Sunday, the congregants would arrive between 5:30 AM to 6:00 AM and the service would last approximately one (1) hour. Immediately afterwards, they would leave. There is no social hour after the services and no food is prepared. If the number of congregants exceeds the maximum capacity allowed, an additional facility would be opened at a different site so that there would be no need for split services.

Mr. Druckenmiller explained that the interior of the existing structure would be converted into a single open room with two (2) bathrooms and an entry foyer to the rear. He noted that the kitchen area would be removed and there would be little change to the exterior. There would be no Sunday school classes conducted and no office space. Since there are no pastors or ordained clergy, no one would be living at the facility. The existing shed would be relocated to a conforming location and used as storage for landscaping equipment which would be minimal since a landscaping service would be employed to maintain the grounds. One (1) family per month is assigned to clean the interior.

Hearing no further questions from the Board or its Professionals, Chairman Breslin opened the hearing to the public for questions of the witness.

In response to John Tormay, 12 Acken Road, Mr. Druckenmiller stated that services on Mondays are held between 6:00 PM and 7:00 PM.

Hearing no further questions, that portion of the hearing was closed.

William G. Hollows, PE, PP, engineer and professional planner with the firm of *Murphy and Hollows Associates LLC*, Stirling, NJ, was accepted by the Board as an expert in civil engineering and professional planning. He gave a brief description of the subject property as it currently exists and then outlined the proposed changes which include a new driveway and parking area with 15 stalls (plus 6 banked stalls) and a detention system for stormwater management. He testified that water would exit the basin and be directed to the stormwater drainage system in the county road in front of the property. Currently, because of the topography, the water runs equally to the front and the back of the property. With the proposed grading and the new system, he stated that no water from the renovations will run off onto adjoining properties.

Exhibit A-1, a colorized rendering of Sheet 6 of 8 from plans prepared by Mr. Hollows, last revised 04/27/2020, was entered into evidence and showed the proposed landscaping along with a proposed walkway from the parking lot to the rear entry. Mr. Hollows stated that the existing walkway to the front entrance would remain.

Mr. Hollows testified that the proposed lighting on the subject property complies with the Township's lighting ordinance, noting that the plan showed zero foot-candles at the property lines.

Mr. Hollows addressed the list of variances and exceptions in Mr. Schley's memo dated 07/23/2020 and stated that

moving the existing shed to a conforming location would eliminate a deviation that currently exists.

Mr. Hollows stated that the detention basin would drain by gravity and that maintenance of the basin would consist of mowing the grass on it and ensuring that there are no blockages.

Hearing no further questions from the Board or its Professionals, Chairman Breslin opened the meeting to the public for questions of this witness.

Ellen Bond, 12 Acken Road, questioned the number of parking stalls proposed and how the runoff from the site onto the neighboring properties would be handled. Mr. Hollows responded that the Township ordinances dictate the number of parking stalls based on the number of congregants and that the application addresses the runoff from the proposed paved areas only.

Mr. Quinn expressed concern that, other than in the parking area and the bathrooms, there are no provisions for Americans with Disabilities Act (ADA) compliance. Mr. Druckenmiller testified that he met with the Township's Construction Official who advised him that if the cost of compliance items such as ramps exceeds 20% of the project budget, they are not required. Mr. Quinn opined that ADA regulations are federal mandates and that the Board could not preempt that. The Applicant stipulated to affirming the Applicant's exemption to the satisfaction of the Township Engineer.

In response to a question from the Board, Mr. Schley stated that if ADA regulations require a ramp to be installed to the building entrance and it is an open deck style ramp, it would actually lower the amount of impervious coverage, assuming the Applicant would remove some of the existing walkway.

Mr. Druckenmiller testified that the exterior of the house would remain essentially unchanged and continue to look like a single-family dwelling. There would be no signs.

Hearing no further questions from the Board or its Professionals, Chairman Breslin opened the hearing to the public for questions of the witness. Hearing none, he closed that portion.

Mr. Hollows reviewed the comments made in the Liberty Corner Fire Company's (LCFC) memo dated 08/04/2020. He opined that because of the proximity of a fire hydrant and the fact that there would be no cooking facilities in the building, there would be no need for sprinklers or to have a Fire Department Connection. The LCFC also requested that the area reserved for the six (6) banked parking spaces be changed to a fire vehicle turnaround area and striped for a "no parking fire zone". He opined that the area was not large enough for a fire truck to turn around. Mr. Quinn agreed. Mr. Hollows stipulated to the remaining comments in the memo.

Mr. Zellely noted that the Liberty Corner First Aid Squad had not voiced any concerns with the project.

Mr. Hollows stipulated to comments made by Mark Sylvester, Township Fire Official, in his memo dated 08/04/2020.

Mr. Hollows addressed the "Specific Comments" made by Mr. Schley in his memo dated 07/23/2020 and stated that he was unsure as to whether lighting would be installed in the banked area. Mr. Zellely added that because ample parking would be provided, no cars would park in the driveway itself, so there would be no need to provide a fire lane with striping. He opined that the striping would be unattractive and detract from the esthetic feel of the property as residential. Mr. Hollows testified that the Applicant would comply with the remaining comments.

Mr. Hollows addressed comments made by Mr. Quinn in his memo dated 08/04/2020 noting that the only security lighting proposed would be sconces with motion sensors on the front and back doors. He also stipulated to adding recharge features to the proposed stormwater drainage system. The remainder of the comments were addressed to Mr. Quinn's satisfaction.

Mr. Hollows addressed the comments made by the Environmental Commission to the satisfaction of the Board.

Mr. Hollows opined that this site could accommodate the proposed use, adding that because the property would be used only a few hours each week, it would result in a reduction in intensity from a standard residential use. An

existing deviation (shed location) would be eliminated and the proposed landscaping would provide additional screening and enhance the property visually. He provided testimony to support both the positive and negative criteria required for "c-1" or "hardship" variances and "c-2" or "benefits outweigh detriments" variances. Finally, he opined that approval would present no detriment to the public good or to the intent of the zoning ordinance.

The hearing was opened to the public for questions.

Ellen Bond, 12 Acken Road, questioned the height of the stockade fence and the proposed plantings that would be used to screen headlights from the adjacent dwellings. She asked if other satellite facilities are located in residential areas and Mr. Druckenmiller replied that there are several.

Todd Edelstein, 172 Riverside Drive, asked if propane tanks would be used for heat and hot water and if the Applicant would stipulate to removing the kitchen.

Hearing no further questions, that portion of the hearing was closed. Chairman Breslin opened the meeting to the public for comments.

Ellen Bond, 12 Acken Road, was duly sworn and commented about existing water runoff issues. She also expressed concern that noise and headlights from the early morning services on Sunday would disrupt her sleep. Finally, she felt that the project itself would devalue her house.

John M. Gray, 16 Acken Road, was duly sworn and expressed concern over various issues such as noise, light pollution, landscaping and drainage. He opined that the Applicant was asking for too much in variance relief.

Todd Edelstein, 172 Riverside Drive, was duly sworn and commented on the potential for fire primarily since the building would be vacant most of the time and on his request that the Applicant stipulate to removing the kitchen.

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

Mr. Zelle provided a brief summation of the project, opining that testimony had been provided to support relief for a "d(3)" or "conditional use" variance along with the bulk variances, exceptions and site plan approval.

After deliberating, the Board granted the application for Preliminary and Final Site Plan approval. The Board also concluded that the Applicant had satisfied the positive and negative criteria required for the variance relief and exceptions requested. Mr. Tancredi moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the site plan approval and variance relief subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Kraus seconded.

Roll Call:	Aye:	Breslin, Cambria, Eorio, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

2019 ANNUAL REPORT AND RECOMMENDATIONS

Mr. Schley and Mr. Warner gave a brief introduction to the report and the adoption process. The Board agreed to discuss it at the next meeting.

COMMENTS FROM MEMBERS OR STAFF – NONE

ADJOURN

By unanimous Voice Vote, the meeting was adjourned at 11:50 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as amended 09-09-2020

09/09/2020 v3 dssw

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v3
VIRTUAL Special Meeting
June 11, 2020

CALL TO ORDER

Vice Chairman Zaidel called the meeting to order at 7:31 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Vice Chairman Zaidel read the following statement:

"In accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and operational guidance documents issued by the Division of Local Government Services of the Department of Community Affairs, notice of this Special Virtual Meeting of the Zoning Board of Adjustment of the Township of Bernards by web-based platform with remote public access was posted more than 48 hours in advance on the Township website, on the outside doors of the Municipal Building, One Collyer Lane, Basking Ridge, New Jersey; was sent to the Bernardsville News, Whippany, New Jersey and the Courier News, Bridgewater, New Jersey; was also filed with the Township Clerk, all on May 29, 2020; and was mailed electronically to all those people who have requested individual notice.

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

Please note that in light of the guidelines issued by the Department of Community Affairs, Division of Local Government Services regarding holding virtual land use board meetings and hearings, the Board has decided to proceed with this meeting as a virtual meeting.

The Municipal Building will not be open for this meeting which will be conducted using Zoom Video Conferencing. The meeting will be streamed live via You Tube for those interested in watching on their computers. The link will be available at 7:30 PM by clicking the "Watch the Meeting Live" icon on the Bernards Township homepage. Public questions/comments from Bernards Township residents will be accepted only during the public questions/comments periods of the meeting. Please call Thomas J. Quinn at 908-930-3434. If you have an iPhone, please use "Facetime" for your call. You will be required to provide your name and address and be sworn in prior to making comments."

ROLL CALL:

Members Present: Eorio, Genirs, Humbert, Kraus, Pochtar, Tancredi, Zaidel
Members Absent: Breslin (recused), Juwana
Also Present: Board Attorney, Amanda Wolfe, Esq.; Township Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Ms. Genirs, seconded by Mr. Kraus, all eligible in favor and carried, the absence of Mr. Juwana was excused.

APPROVAL OF RESOLUTION

[Hayworth, Stephen B.; ZB20-005](#); Block 1511, Lot 4; 10 Depot Place; Bulk Variance (approved) – Mr. Tancredi moved to approve the resolution as drafted. Mr. Eorio seconded.

Roll call: Aye: Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
Nay: NONE
Ineligible: Humbert

Motion carried.

APPROVAL OF RESOLUTION

[Hughes, Robert & Carrie C.; ZB20-008](#); Block 5401, Lot 21; 31 Coppergate Drive; Bulk Variances; (approved) – Ms. Pochtar moved to approve the resolution as drafted. Mr. Tancredi seconded.

Roll call:	Aye:	Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
	Nay:	NONE
	Ineligible:	Humbert

Motion carried.

PUBLIC HEARING

[New York SMSA LLP d/b/a Verizon Wireless](#); Block 803, Lots 2, 3, 5, 6, and 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Use (d-1) Variance, Bulk Variance; ZB20-001 (carried from 05/06/2020)

Present:	Richard L. Schneider, Esq., Attorney for the Applicant
	David K. Stern, PE, Radio Frequency Engineer for the Applicant
	Frank Colasurdo, RA, Architect for the Applicant
	Christopher Lanna, Environmental Consultant for the Applicant
	William F. Masters, Jr., PP, Planner for the Applicant
	Andrew M. Petersohn, PE, Engineer for the Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the Board had jurisdiction to hear the application and that all the witnesses had been previously sworn during the 05/06/2020 hearing.

Richard L. Schneider, Esq., attorney with the firm of *Vogel, Chait, Collins & Schneider PC*, Morristown, NJ, entered his appearance on behalf of the Applicant. He then gave a brief summary of the application and what had transpired at the previous meeting noting that testimony had been presented to establish that the application complies with the electromagnetic field (EMF) guidelines as set forth by the Federal Communications Commission (FCC). He noted that this determination of safety is solely under the purview of the FCC and that the Board has no jurisdiction in the matter. However, in an effort to address concerns about the levels of EMF raised by residents at the last meeting, Mr. Petersohn, who had been accepted by the Board as an expert in the field of EMF compliance, had prepared an additional report which was submitted as **Exhibit A-4** (consisting of 4 pages, dated 05/08/2020).

Referring to that exhibit, Andrew M. Petersohn, PE, engineer with the firm of *dBm Engineering PC*, Fairview Village, PA, testified that this supplemental report refines the testimony presented at the previous hearing and addresses the contributions of the most proximate nodes (#15 and #43) to the EMF levels at #27 and #28 Brentwood Court, the residential properties most impacted by the application. He stated that the report contains additional analyses with exact calculations and that he followed the FCC guidelines for performance calculations to generate the results, reiterating that in each instance he used worst-case scenario assumptions in his calculations. The results show that this installation is significantly below the FCC General Population Maximum Permissible Exposure Limit at both residential locations and that the Verizon antenna site installation will be fully compliant with the FCC human exposure standards. He added that due to the design of the nodes, their distance and the existing conditions, the radio frequency exposure contribution of the proposed nodes would likely be entirely masked by the ambient radio frequency environment on the two properties studied.

Hearing no questions from the Board, Vice Chairman Zaidel opened the meeting to the public for questions of this witness and imposed a 5-minute time limit.

David A. Berger, 28 Brentwood Court, questioned how the testing was conducted since the nodes weren't even up yet. Mr. Petersohn responded that he used the FCC prescribed methodology in determining anticipated exposure. He added that the analysis was conducted as if there was a clear line of sight between the nodes and the closest property lines and because he did not use any attenuating factors such as foliage in his calculation, the resulting anticipated exposure levels were grossly exaggerated but still well below the FCC requirements. Mr. Berger expressed concern that the FCC guidelines are outdated since they are from 1996. Mr. Petersohn responded that the FCC had adopted an order in 2019 reaffirming those guidelines on exposure safety standards.

Lawrence Trachtenbroit, 21 Brentwood Court, was duly sworn by Ms. Wolfe and expressed concern that the 1996 FCC guidelines being used are outdated.

William Ratz, 27 Brentwood Court, asked if the Board was aware that a petition signed by over 100 township residents had been forwarded to Ms. Kiefer. Ms. Wolfe advised that the Board is not allowed to consider ex parte communications such as a petition. He then asked if there had been any studies conducted to ascertain the effect of EMF levels from 5G technology on wildlife. Mr. Petersohn responded that he was not aware of any negative effects.

Izabela Trachtenbroit, 21 Brentwood Court, questioned the methodology used in the calculations and asked how residents could measure the actual levels. Mr. Petersohn responded that a citizen could request that a post-construction test be performed.

Eduardo E. Rubino, 84 Culberson Road, asked if there have been any variants seen from the anticipated exposure levels and the actual results. Mr. Petersohn responded that on-site surveys have consistently shown that the actual levels are significantly below what is anticipated by the calculations.

Hearing no further questions, that portion of the hearing was closed.

Frank Colasurdo, RA, principal with *Frank Colasurdo Architects*, Mt. Olive, NJ, was accepted by the Board as an expert in the field of architecture specializing in wireless facility design.

Mr. Colasurdo gave a brief description of the subject property and existing structures. He then provided testimony as to the rationale for the placement of each of the six (6) nodes and added that the hotel is used strictly for Verizon invitees. He noted that the Applicant proposes to install a security camera in the corner of the upper parking deck near Node #13. In response to a question, Mr. Colasurdo stated that no trees will be removed and that the proposal will not create any additional impervious coverage.

Mr. Schneider stipulated to those comments made in both Mr. Schley's memo dated 04/20/2020 and Mr. Quinn's memo dated 04/08/2020 which were under his purview.

Hearing no questions from the Board, Vice Chairman Zaidel opened the meeting to the public for questions of this witness and imposed a 5-minute time limit.

Tamara L. Devoe, 274 North Maple Avenue, asked if the Applicant is willing to plant trees to block the signal. Mr. Schneider opined that it is not necessary since the EMF levels are so low.

Dr. Ratz questioned the 5G nodes recently approved for the Verizon headquarters campus and commented that the virtual forum being used for this hearing was terrible.

Mrs. Trachtenbroit asked how many more nodes are planned. Ms. Wolfe responded that the Board could only consider the six (6) nodes proposed in this application.

Barbara Chorazykiewicz, 195 Madisonville Road, asked if there are any nodes planned for Madisonville Road. Mr. Schneider responded that the Board could only consider the six (6) nodes proposed in this application.

Mr. Rubino stated that the residents are concerned about future applications. Vice Chairman Zaidel responded that the Board could only consider the six (6) nodes proposed in this application.

Lorena Ratz, 27 Brentwood Court, asked if the nodes could be moved closer to Interstate 287 and away from the residential areas. Mr. Schneider responded that that had been addressed during the first meeting.

Mrs. Chorazykiewicz asked about the basis for the New Jersey Department of Environmental Protection (NJDEP) permits. Mr. Colasurdo provided an explanation noting that one of the two required permits had already been approved and that they were awaiting approval of the second.

The Board decided to proceed with the remaining testimony and to allow both questions and comments afterwards.

William F. Masters, jr., PP, professional planner with a business address of Morris Plains, NJ, was accepted by the Board as an expert in the field of professional planning. He discussed the relevant characteristics of the property from a planning perspective, adding that although the current use of the property as a conference center is a permitted use, the proposed nodes are not an accessory use to the permitted principal use ("accessory use" meaning a use naturally and normally incident and subordinate to the principal use) and hence, require a "d(1)" or "use" variance. He testified that a previous determination had been made that, due to the testing aspect of these nodes, the township's wireless ordinances do not apply and that if they did apply, these proposed nodes would be in compliance.

Mr. Masters then addressed both the Sica and Medici standards in regard to the "d(1)" or "use" variance and also provided testimony to satisfy the positive and negative criteria for both a "c(1)" or "hardship" variance and a "c(2)" or "benefits outweigh detriments" variance for the two (2) bulk variances required.

* * * *The Open Session was recessed at 10:14 PM and reconvened at 10:21 PM.* * * *

Mr. Kraus asked if the Applicant would be agreeable to conducting a post-construction survey in order to assure the residents that the actual EMF levels would be far less than the estimated levels, as Mr. Petersohn stated. Mr. Schneider stated that he would not agree to that as a condition at this point.

Vice Chairman Zaidel stated that normally the hearing would be opened to the public at this time, but because of the late hour, the application would be carried to a special meeting to be held on June 22, 2020 *in person and with no further notice* so that all of the residents would have an opportunity to ask questions and make comments. Mr. Schneider provided an Extension of Time to Act through June 22, 2020.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

On motion by Mr. Humbert, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 10:51 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Approved as drafted 08-05-2020

07/14/2020v3 dsswaw

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v3
Special Meeting
June 22, 2020

CALL TO ORDER

Vice Chairman Zaidel called the meeting to order at 7:32 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Vice Chairman Zaidel read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this special meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on June 18, 2020 and was electronically mailed to all those people who have requested individual notice.

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

This meeting will be held in person in the Warren Craft Meeting Room. In addition, the public will be able to view the meeting live on Optimum/Cablevision TV – Channel 15 and Verizon FIOS TV – Channel 35 and the meeting will also be streamed live for those interested in watching on their computers. The link will be available at 7:30 PM by clicking on the "Watch the Meeting Live" icon on the Bernards Township homepage. Questions/comments from Bernards Township residents will be accepted only during the public questions/comments periods of the meeting. Those questions/comments may be offered in person at the hearing or by calling 908-930-3434. If you have an iPhone, please use "Facetime" for your call. You will be required to provide your name and address and be sworn in prior to making comments."

ROLL CALL:

Members Present: Eorio, Genirs, Humbert, Pochtar, Tancredi, Zaidel
Members Absent: Breslin (recused), Juwana, Kraus
Also Present: Board Attorney, Steven K. Warner, Esq.; Township Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Ms. Genirs, seconded by Mr. Eorio, all eligible in favor and carried, the absences of Mr. Juwana and Mr. Kraus were excused.

APPROVAL OF MINUTES

[April 29, 2020 – Special Session \(virtual\)](#) – On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Eorio

APPROVAL OF RESOLUTION

[Sweet Pea Farms I LLC; ZB20-004](#); Block 11501, Lot 3.03; 48 Kings Ridge Road; Bulk Variances (approved) – Mr. Tancredi moved to approve the resolution as drafted. Ms. Pochtar seconded.

Roll call: Aye: Eorio, Pochtar, Tancredi, Zaidel
Nay: NONE
Ineligible: Genirs, Humbert

Motion carried.

PUBLIC HEARING

[New York SMSA LLP d/b/a Verizon Wireless](#); Block 803, Lots 2, 3, 5, 6, and 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Use (d-1) Variance, Bulk Variances; ZB20-001 (continued from 06/11/2020)

Present: Richard L. Schneider, Esq., Attorney for the Applicant
Frank Colasurdo, RA, Architect for the Applicant
Christopher Lanna, Environmental Consultant for the Applicant
William F. Masters, Jr., PP, Planner for the Applicant
Andrew M. Petersohn, PE, Engineer for the Applicant

Richard L. Schneider, Esq., attorney with the firm of *Vogel, Chait, Collins & Schneider PC*, Morristown, NJ, entered his appearance on behalf of the Applicant and gave a brief summary of what had transpired at the previous meeting (06/11/2020). He stated that all four (4) of the Applicant's witnesses had completed their testimony and the Board, its professionals and the public had completed their questioning of the first three (3). The Board had had the opportunity to question the final witness, William F. Masters, Jr. PP during the previous meeting however due to the late hour, public questioning of Mr. Master's testimony was carried to this meeting.

Mr. Warner listed the dates of the previous hearings and stated that they had all been properly noticed and carried, therefore the Board had jurisdiction to hear the application. He stated that the ex parte communications that had been submitted to the Board Secretary, by law could not be considered by the Board unless they are introduced into evidence in person under oath during an open public meeting.

Vice Chairman Zaidel opened the hearing to the public for the purpose of questioning Mr. Masters and imposed a 5-minute time limit for each individual.

Izabela Trachtenbroit, 21 Brentwood Court, asked why Verizon is not installing nodes at its headquarters at 295 North Maple Avenue. Mr. Schneider advised that that location had received approval for 16 nodes during a Planning Board hearing held earlier in the year. Ms. Trachtenbroit then asked about safety issues. Mr. Schneider responded that those questions had been addressed at previous hearings by David Stern, PE (radio frequency engineer) and Andrew M. Petersohn, PE (electromagnetic field compliance expert). Finally, he stated that the Federal Communications Commission (FCC) has preempted that issue by removing electromagnetic field (EMF) compliance from the purview of local land use boards and that the Applicant's sole burden is to prove strict compliance with the FCC's guidelines which, he opined, had been demonstrated by Mr. Petersohn previously.

Barbara Chorazykiewicz, 195 Madisonville Road, asked why the nodes are being installed in residential areas. Mr. Masters stated that none of the nodes will be located in residential zones.

Lorena Ratz, 27 Brentwood Court, asked why she had received notice. Mr. Warner responded that all property owners located within 200 feet of the perimeter of the subject property are required by law to receive personal notice.

Hearing no further questions from either the public present in the room or via telephone, that portion of the hearing was closed.

In response to requests by the public at the last meeting, Mr. Schneider stated that the Applicant would stipulate, as a condition of approval, to conducting a one-time post-construction operational test within 60 days after completion of the installation to ensure that EMF levels are in compliance. Mr. Schneider confirmed that the Applicant would not object to the test results being posted on the Township's website.

Vice Chairman Zaidel opened the hearing to the public for comments. The following residents were duly sworn and spoke in opposition to the application based on safety concerns:

Lawrence Trachtenbroit, 21 Brentwood Court
Jaroslaw and Barbara Chorazykiewicz, 195 Madisonville Road
Izabela Trachtenbroit, 21 Brentwood Court
William Ratz, 27 Brentwood Court
Caryn M. Simmons, 262 North Maple Avenue (via telephone with no visual with permission from Mr. Schneider)
David Berger, 28 Brentwood Court

Todd Edelstein, 172 Riverside Drive, asked that the Board ask for a stipulation that a shield be placed behind each node to protect residential areas.

Dr. Ratz stated that at the last meeting (06/11/2020), a board member was overheard making derogatory comments about those members of the public speaking out against the application and he asked that she refrain from voting on the application. Mr. Warner stated that he had spoken to the Board Member that Dr. Ratz was referring to and Mr. Warner concluded that the Board Member did not have a disqualifying conflict of interest, nor did the Board Member demonstrate bias as against the neighboring objectors in favor of the application, and could decide the application objectively on the merits based solely on the evidence presented. Dr. Ratz disagreed.

Hearing no further comments from either the public present in the room or via telephone, that portion of the hearing was closed.

Mr. Warner reviewed the conditions stipulated to by the Applicant. A discussion ensued as to whether the Applicant would also stipulate to planting trees between Node #15 and the adjacent residential properties.

* * * *The Open Session was recessed at 8:57 PM and reconvened at 9:08 PM.* * * *

Mr. Schneider stipulated, as conditions of approval, to the installation of onsite supplemental landscaping in consultation with the Township Planner, to comments made in Mr. Schley's and Mr. Quinn's memos and to those conditions as stated during testimony.

Mr. Schneider briefly summarized the testimony presented in support of the application, reminding the Board that the FCC stated that it was not fair or appropriate for the Board to assess the credibility of studies or articles about this type of technology. The FCC had also articulated EMF exposure level standards and if those standards are met, as he opined had been proven here, the Board cannot base a denial on EMF levels.

Mr. Schneider confirmed that the Applicant wished to proceed with a vote even though there were only six (6) eligible members present and approval would require a super-majority of five (5) affirmative votes.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(2)" or benefits vs. detriments" variances and had demonstrated an entitlement to the requested d(1) use variance relief under the less restrictive Sica standards and the more restrictive Medici standards of proof. Mr. Tancredi moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant preliminary and final site plan approval and to grant the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Humbert seconded.

Roll call:	Aye:	Eorio, Genirs, Humbert, Pochtar, Tancredi, Zaidel.
	Nay:	NONE

Motion carried.

Mr. Schneider requested that the Board allow the installation of Nodes #12 #13, #14 and #43 *at the Applicant's own risk* prior to the adoption of the memorializing resolution. Mr. Schley and Mr. Quinn saw no administrative concerns and a straw poll of the Board indicated that the members supported the request.

COMMENTS FROM MEMBERS OR STAFF – Vice Chairman Zaidel thanked the Board for its work.

ADJOURN

On motion by Mr. Eorio, seconded by Ms. Genirs, all in favor and carried, the meeting was adjourned at 9:47 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 08-05-2020

07/15/2020 v3 dssw

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v4
Regular Meeting
July 8, 2020

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:33 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairman Breslin read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 9, 2020 and was electronically mailed to all those people who have requested individual notice."

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

ROLL CALL:

Members Present: Breslin, Eorio, Humbert, Juwana, Kraus, Pochtar, Tancredi
Members Absent: Genirs, Zaidel
Also Present: Board Attorney, Steven K. Warner, Esq.; Township Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the absences of Ms. Genirs and Mr. Zaidel were excused.

APPROVAL OF MINUTES

[May 6, 2020 – Regular Session \(virtual\)](#) – On motion by Ms. Pochtar, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF MINUTES

[June 3, 2020 – Regular Session \(virtual\)](#) – On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Humbert

COMPLETENESS AND PUBLIC HEARING

[Kangas, David C. & Kristine A.](#); Block 2701, Lot 11; 134 South Alward Avenue; Bulk Variance; ZB20-009

Present: David C. & Kristine A. Kangas, Applicants
Dickson Munds, Pool Contractor

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants, Mr. Munds and the Board's Professionals were duly sworn.

Kristine A. Kangas, Applicant residing at 134 South Alward Avenue, testified that to maximize the outdoor use of the subject Property, she and her husband propose to construct an inground swimming pool with an attached spa, a pavilion with an outdoor kitchen and a patio/walkway, all behind the existing dwelling. She stated that because their house is located forward of the two (2) adjacent houses, the application required variance relief for a "pool not located to the rear of adjacent dwellings." She added that if the pool was located in a conforming location, many mature trees would have to be removed.

Dickson Munds, contractor with the company, *Premier Pools and Spas*, Pittstown, NJ, addressed the comments

made in Mr. Schley's memo dated July 6, 2020. **Exhibit A-1**, a compendium of four (4) color pictures taken by Mr. Kangas which showed a dozen or more mature trees that would have to be removed if the pool was relocated to a conforming spot, was entered into evidence. Mr. Munds testified that the proposed drywell was pushed back to accommodate a swale which is required for adequate drainage. In response to a suggestion by Mr. Quinn that the drywell be relocated to the side, Mr. Munds stated that there are trees in that area that would have to be removed. The Applicants stipulated, as a condition of approval, that if the Township's Engineering Department determines that the dry well could be relocated without any tree removal, they will do so.

The Applicants stipulated to all the comments in both Mr. Schley's and Mr. Quinn's memos. They also stipulated to using downlit lighting fixtures inside the cabana and to conforming to the Township's lighting ordinance.

The Applicants testified that they had spoken to the adjacent neighbors and both were in favor of the project.

The hearing was opened to the public for questions or comments. Hearing none, that portion was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for a "c(2)" or "benefits outweigh detriments" variance. Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the variance relief requested subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Kraus seconded.

Roll Call:	Aye:	Breslin, Eorio, Humbert, Juwana, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Reynolds, Scott/Ellison, Martha; Block 5201, Lot 2; 36 Kensington Road; Bulk Variance; ZB20-010

Present: Scott Reynolds, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicant and the Board's Professionals were duly sworn.

Scott Reynolds, Applicant residing at 36 Kensington Road, testified that he proposes to replace an existing open deck with a covered deck/screened porch and a patio behind the existing dwelling requiring relief for minimum rear yard setback for one section of the porch because the rear lot line is not parallel to the porch. He noted that the porch deviation was less than that of the existing deck.

Mr. Reynolds testified that he hadn't heard any negative comments from his neighbors. He also stated that he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists. Finally, he stipulated to the comments made in both Mr. Schley's and Mr. Quinn's memos.

The hearing was opened to the public for questions or comments. Hearing none, that portion was closed.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for both a "c(1)" or "hardship" variance and for a "c(2)" or "benefits outweigh detriments" variance. Ms. Pochtar moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the variance relief requested subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Eorio seconded.

Roll Call:	Aye:	Breslin, Eorio, Humbert, Juwana, Kraus, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

Mr. Kraus recused himself from hearing the following application and left the building.

* * * *The Open Session was recessed at 8:15 PM and reconvened at 8:20 PM.* * * *

COMPLETENESS AND PUBLIC HEARING

Heath, Christopher & Renee; Block 10704, Lot 42; 21 Old Stagecoach Road; Elimination of Condition, Bulk Variance; ZB20-007 (carried from 06/03/2020)

Present: Christopher & Renee Heath, Applicants
Michael J. Lipari, Esq., Attorney for the Objector

Mr. Warner advised the Board that the Applicants are requesting elimination of Condition #7 of the Resolution (ZB13-013) memorializing the Board's approval of bulk variance relief to replace a single-family house destroyed by fire with a new dwelling. This condition requires the Applicants to obtain an easement granting unrestricted access from Old Stagecoach Road to the driveway of the subject Property since it is landlocked. He stated that a challenge to the Board's jurisdiction in this matter has been raised.

Michael J. Lipari, Esq., attorney with the firm of *Cutolo Barros LLC*, Freehold, NJ, entered his appearance on behalf of the Objector, the Hills Highlands Master Association, Inc. (HHMA). Mr. Warner confirmed receipt of the legal brief submitted by Mr. Lipari which argues a deficiency in the content of the Applicants' notice and a deficiency in the scope of the 200-foot Property Owners List (POL) used, along with other arguments challenging the jurisdiction of the Board to hear the application. In addition, Ms. Kiefer could not confirm that all those listed on the POL had been served.

Renee Heath, Applicant residing at 21 Old Stagecoach Road, was duly sworn and testified that she had received the legal brief from Mr. Lipari and that notice had been served to all those listed on the POL. She then described the failed attempts through negotiations and through the courts that she had made to obtain the easement from the HHMA and hence, to satisfy the condition.

Mr. Warner advised that the issue of jurisdiction had to be decided before a hearing on the merits of the application could move forward. He recommended that the decision on jurisdiction should be postponed until the September 9, 2020 public meeting so that the parties could submit written position statements and then on September 9th present their oral arguments.

After a discussion about which properties should be included in a broader version of the POL, it was agreed by the parties that those property owners within 200 feet of the perimeter of both Lot 42 (the subject Property) and Lot 25 (the HHMA Property) should be included.

Mr. Warner recommended that the Applicants renote since there is no proof that the original notice was sent to everyone on the shorter POL. He added that the Applicants are free to use either the shorter or broader POL and are free to change the content or to use the original notice. He also noted that nothing precludes the parties from discussing the merits of the application prior to the September hearing date and coming to an agreement to resolve same. The Board directed the parties to proceed as Mr. Warner recommended. Ms. Heath agreed to provide a written response to the position statement already submitted by Mr. Lipari no later than August 5, 2020.

The Applicants granted the Board an Extension of Time to Act through September 30, 2020.

COMMENTS FROM MEMBERS OR STAFF – NONE**ADJOURN**

On motion by Ms. Pochtar, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 8:50 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as amended 08-05-2020

07/21/2020v4 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**NEW YORK SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS
300 NORTH MAPLE AVENUE
BLOCK 803, LOTS 2, 3, 5, 6 & 23
Case No. ZB20-001**

RESOLUTION

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking preliminary and final site plan approval and d(1) use variance and bulk variance relief, as set forth below, in connection with the installation of six (6) test nodes (antennas) relating to the testing/research of 5G wireless communication services, to be located on property identified as Block 803, Lots 2, 3, 5, 6 & 23 on the Township Tax Map, and more commonly known as 300 North Maple Avenue or the Ridge Hotel (the “Property” or “Site”):

- (1) A d(1) use variance for the proposed use of test nodes (antennas) relating to testing/research of 5G wireless communication services, whereas the nodes constitute a non-permitted use in the E-1 Zone that is not accessory to the permitted principal use of the Property as a conference inn, pursuant to Section 21-3.1 of the Land Development Ordinance (“LDO”);
- (2) A variance for a side-yard setback of 59 feet-5-inches for Node 15, whereas the minimum required side-yard setback is 100 feet in the E-1 Zone, pursuant to Section 21-15.2.d and Table 506 of the LDO; and
- (3) A variance for a setback from a residential zone of 59 feet-5-inches for Node 15, whereas the minimum required setback from a residential zone is 150 feet in the E-1 Zone, pursuant to Section 21-15.2.d and Table 506 of the LDO; and

WHEREAS, web-based and in-person public hearings on notice were held on this application on May 6, June 11, and June 22, 2020, at which time interested citizens were afforded an opportunity to appear virtually and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. All of the application materials and hearing exhibits were posted on the municipal website, and made available to members of the public, within the requisite timeframe, in advance of the hearing. Members of the public were provided with instructions on how to access said materials and participate in the web-based hearings and were afforded the opportunity to also participate in person for the final hearing date.

2. All Board Members and Board Professionals and staff participated in the virtual hearings through the web-based platform and were able to perceive the Applicant and the Applicant's professionals, both visually and audibly, in real time, and participated in-person for the final hearing date.

3. Chairman Breslin recused himself from hearing the application given that he resides within 200 feet of the Property.

4. The Board deemed the application conditionally complete at a prior meeting on March 4, 2020.

5. The Property is located on the westerly side of North Maple Avenue across from the Verizon Corporate Campus. The Property can be accessed from North Maple Avenue. Northbound traffic enters the Site via an overpass that also serves the Verizon Corporate Campus and southbound traffic has direct driveway access from North Maple Avenue.

6. The Property contains 34.99 acres and is occupied by The Ridge Hotel, which is a conditionally permitted use (a "conference inn") in the E-1 Zone. The existing facility was

constructed pursuant to Planning Board approvals dating to 1986, and was most recently before the Board of Adjustment in 2018, when the Board granted variances to permit replacement of two existing freestanding identification signs.

7. The Applicant proposes to install a total of six (6) wireless communications test nodes (antennas), all of which would be used in conjunction with the testing and research of 5G wireless communication services being conducted at the Verizon Corporate Campus located across North Maple Avenue. Each node is 12 inches wide by 18.7 inches high by 6.3 inches deep, and the nodes are proposed to be concealed using film matching the surface to which it is being mounted. Three nodes (Nodes 12, 14 & 43) are proposed to be mounted on the existing Ridge Hotel, one node (Node 13) is proposed to be mounted on a new 20 foot high security camera pole on the existing parking deck, and two nodes are proposed to be mounted on an existing 16.5 foot high light pole (Node 15) and an existing 16 foot high light pole (Node 16), which will replace two existing light poles in the same ground-level locations. Proposed Nodes 15 and 16 include the installation of underground utilities (electric and fiber) extended from the existing building. All of the existing improvements and the proposed nodes are located in the E-1 Office Zone. No construction or land disturbance is proposed in the residentially-zoned portions of the Site.

8. By way of background, in January 2020, the Applicant obtained approval from the Planning Board of the Township of Bernards (the “Planning Board”) to install sixteen (16) 5G test nodes at the Verizon Corporate Campus located across North Maple Avenue. The Planning Board had jurisdiction to hear that application because those nodes are an accessory use to the permitted principal use (scientific/research laboratory) located on the same lot. This

current application was filed with the Board of Adjustment because the proposed nodes are not considered wireless telecommunications antennas pursuant to Section 21-17A of the Land Development Ordinance because they are not part of the Verizon network that serves the public (they are solely used to test 5G capabilities on the Property), nor are they an accessory use to the permitted principal use (conference inn) located on the subject lot. As such, the Applicant's proposal to install the test nodes requires a "d" (use) variance pursuant to N.J.S.A. 40:55D-70d(1). The bulk variance relief the Applicant seeks is governed by N.J.S.A. 40:55D-70(c).

9. The Applicant submitted architectural plans prepared by Frank Colasurdo, R.A., dated November 26, 2019, last revised April 10, 2020, same consisting of eighteen (18) sheets; a Conservation Easement Map prepared by Kurt T. Hanie, P.L.S., of Gladstone Design, Inc., dated July 20, 2018, unrevised, same consisting of one (1) sheet; a Project Report prepared by Michael Muller and Christopher Lanna of E2 Project Management, LLC, dated January 2020, unrevised; an Environmental Impact Assessment also prepared by Mr. Muller and Mr. Lanna, dated January 2020, unrevised; Electromagnet Exposure Certifications for each of the nodes prepared by Andrew M. Petersohn, P.E., dated March 24, 2020, unrevised; Photograph locations, dated March 20, 2020, same consisting of fourteen (14) sheets; a Flood Hazard Area Applicability Determination from the New Jersey Department of Environmental Protection dated February 25, 2020; copies of the prior approvals received; and a color photograph of Verizon's Ridge Hotel.

10. Richard L. Schneider, Esq., of Vogel, Chait, Collins & Schneider, PC, entered his appearance on behalf of the Applicant. Mr. Schneider explained that the Applicant is seeking to install six 5G test nodes on the Site. He explained that no changes are proposed to the footprint

of the existing building and that, aside from the d(1) use variance, the only other variance relief sought relates to the location of an existing light pole on which Node 15 is being mounted.

11. David Schley, P.P., A.I.C.P., the Township/Board Planner, and Thomas Quinn, P.E., C.M.E., the Board Engineer, were duly sworn according to law.

12. David Stern, P.E., Vice President of RF Engineering at V-Comm Telecommunications Engineering, having a business address of 2540 US Highway 130, Suite 101, Cranbury, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of radio frequency (“RF”) engineering.

13. Mr. Stern provided an overview of the history of wireless cellular technology and the various Federal Communications Commission (“FCC”) spectrum licenses the Applicant holds. He explained that 5G technology is approximately 10 times faster than 4G and will be able to provide greater bandwidth, which will allow for faster data speeds and increased capacity. Mr. Stern explained that technology has advanced such that now cars, cameras, appliances, and even entire cities have become “smart” and can now communicate with each other. He further explained that the 5G nodes provide increased capacity, but can only provide such capacity within 300 to 600 feet of the nodes, unlike a wireless tower which can cover a much larger area. Mr. Stern opined that 5G technology lends itself to campus developments and downtown utility poles because the nodes are much smaller and can easily be mounted on existing structures.

14. Mr. Stern testified that the Applicant is seeking to install the proposed nodes as part of a closed network throughout the Verizon campus. He explained that such a network allows Verizon to test new features and products on campus without risk of affecting the entire

national network. Mr. Stern testified that Verizon is currently investigating signal propagation and how various materials can impact signal transmission. He explained that tinted glass can inhibit RF signals, while double paned glass can act as a mirror, and, as such, it is important for Verizon to understand how these materials may impact the quality of service being provided to its customers.

15. Mr. Stern testified that the Property is an extension of the Verizon campus and is often used by subcontractors, vendors, programmers, installers, researchers and developers to test new products, and by Verizon itself for training purposes. He further testified that Verizon will also use the Property and the associated 5G nodes for demonstration and product testing purposes. Mr. Stern reiterated that the proposed 5G nodes will be part of a closed system that is not open to the public. He reminded the Board that only individuals invited to the Property by Verizon are permitted to be onsite, since The Ridge Hotel is not open to members of the general public.

16. Mr. Stern introduced into evidence, as **Exhibit A-1**, a colorized aerial photograph of the Property showing the proposed locations of each of the six nodes. Referencing **Exhibit A-1**, Mr. Stern described the locations of the nodes and the areas within which the nodes are anticipated to provide coverage. As to each node, Mr. Stern referenced the Photograph Location Map submitted with the application materials to provide a better visual representation of the nodes in their respective proposed locations. He explained that Node 12 is mounted within the existing courtyard of the building and provides coverage to the atrium area; Nodes 14 and 43 are mounted back-to-back within the porte cochere area of the building, and Nodes 13, 15, and 16 are stand-alone nodes mounted on existing structures. Mr. Stern further explained that

Node 13 is located on the parking deck at the north corner of the parking lot, closest to Route 287, and that Nodes 15 and 16 will be located on existing light poles. He testified that the installation of Node 15 requires variance relief because the light pole on which Node 15 is proposed to be mounted does not comply with the E-1 Zone setback requirements. Mr. Stern testified that both Node 15 and Node 16 must be mounted at a height of at least 15 feet because otherwise passing truck traffic would interfere with the signal transmission.

17. On questioning as to whether Verizon would upgrade the proposed nodes to larger nodes, Mr. Stern testified that there might be hardware changes as technology advances, but that the overall size of the node would remain the same. He explained that the nodes are a standard design and that cellular carriers are working with vendors to come up with more aesthetically pleasing/less obtrusive designs. On questioning as to why the nodes are necessary at the Property when there already are nodes located across the street at the Verizon campus, Mr. Stern explained that Ridge Hotel is where Verizon invites employees and vendors for events that educate them as to new technology and that it is logical for the technology to be available throughout the Verizon campus, including at the Ridge Hotel.

18. Dr. Bill Ratz, having an address of 27 Brentwood Court, was duly sworn according to law. Dr. Ratz testified that he lives adjacent to the Property and is concerned about the impact the nodes will have on his family's health and safety. Mr. Stern explained that Nodes 15 and 16 are directional and are oriented toward the Applicant's driveway, rather than Dr. Ratz' property. Dr. Ratz questioned whether the nodes could be relocated to the opposite side of the street and Mr. Sterns advised that same would not be possible because the nodes would not provide the necessary coverage. On further questioning as to whether the nodes could be set

back into the existing vegetation, Mr. Sterns testified that they could not be so located because trees and other vegetation would interfere with the signal.

19. On questioning by the Board, Mr. Stern testified that branches can interfere with signal transmission, as can foliage, and part of the reason for installing the nodes is to test signal transmission.

20. Dr. Ratz questioned whether the RF levels for Nodes 15 and 16 could be tested post-construction to see if they were safe and, if the RF levels were determined to be too high, whether the nodes could be relocated. Mr. Sterns testified that if the RF levels were too high, same would be mitigated.

21. Andrew M. Petersohn, P.E., of dBm Engineering, P.C., having a business address of P.O. Box 165, Fairview Village, Pennsylvania, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of electromagnetic fields (“EMF”) compliance. Mr. Petersohn provided an overview of the methodology used to test compliance with FCC regulations. He explained that the FCC sets the standards for how facilities are evaluated for impact on human safety regarding exposure to EMF. Mr. Petersohn further explained that when he calculates potential EMF levels, he takes an ultraconservative view. In this regard, he explained that when testing to see if pedestrians would be impacted by the EMF levels, he assumes the pedestrian is standing on a sheet of glass with 100% ground reflection and the pedestrian is in the main beam of the antenna while it is operating at maximum power. He testified that all six of the proposed nodes are Nokia 5G panel style antenna nodes that operate at a frequency of 28 GHz. Mr. Petersohn explained that the calculations account for maximum power output and antenna pattern. He further explained that panel style antennas are

highly directional and must be appropriately located or else they will not provide the necessary coverage levels.

22. Mr. Petersohn testified that generally EMF signals do not travel significantly more than 10 feet and contended that the proposed nodes would not generate a signal that could travel more than 90 yards away to the adjacent residential property. He testified that, even considering the worst case scenario, where the node is operating at maximum power and is pointed directly at the adjacent residential property, the EMF levels are approximately 855 times below the FCC limit. Mr. Petersohn opined that the nodes will not generate significant EMF levels and confirmed that the Applicant's proposal will comply with FCC regulations by a large margin, particularly as to the adjacent residential property.

23. On questioning as to whether the Applicant could screen the proposed nodes, Mr. Petersohn opined that the screening might be more visually intrusive than the nodes themselves. He explained that a physical metallic barrier would be necessary to reduce EMF levels and that the antennas themselves are designed such that the maximum beam width is 60°. Mr. Petersohn further explained that 5G technology is "beam forming" and the signal essentially follows the device to which it is connected. On questioning as to whether trees impact the signal strength, Mr. Petersohn testified that leaves make a significant difference in signal attenuation and that once foliage is on the trees, network signal declines slightly. He explained that even leafless/coniferous trees can attenuate signal strength. Mr. Petersohn testified that when he calculates signal strength, the calculation assumes that it is at maximum strength, even if, in reality, there are trees that reduce the signal levels. As such, he concluded that the EMF levels

generated by the proposed nodes would not have a significant impact on the adjacent residential property owners.

24. On questioning as to whether weather can impact signal strength, Mr. Petersohn testified that rain attenuates the signal. On questioning as to whether there were any environmental conditions that could magnify the signal beyond what is anticipated, he testified that there are not.

25. On discussion of the FCC standards and whether they were designed for 5G technology, Mr. Petersohn explained that the Telecommunications Act of 1996 considers frequencies of up to 100 GHz. He acknowledged that the features available for 5G networks might not have been contemplated, but that the frequency band certainly was contemplated. On discussion of the safety of 5G technology, Mr. Petersohn testified that he believes the technology is safe and has not seen any credible studies to the contrary. On questioning as to the potential risks to humans of excessive EMF exposure, he testified that such exposure would not result in cellular damage to DNA and, instead, even if exposed to a macro antenna, which is the equivalent of 12 smaller antennas, the only physical symptom would be that one's skin would get warm and that RF burn is possible but only at very close proximities to high powered antennas. Mr. Petersohn testified that there is a saturation effect from the exposure to such EMF waves and the FCC standards account for same. He explained that there are different exposure standards for those individuals who work with cellular technology and have greater exposure to such rays.

26. Members of public questioned whether the nodes could be located elsewhere and whether they would receive notice if the Applicant replaces the proposed nodes with different

nodes in the future. Mr. Petersohn testified that the proposed locations of the nodes are based on coverage requirements and relocating them would limit their effectiveness. The Applicant stipulated, as a condition of approval, to retesting any nodes that are replaced to ensure that they do not generate EMF levels beyond the permissible limits set by the FCC.

27. At the June 11, 2020 hearing, Mr. Petersohn introduced into evidence, as **Exhibit A-4**, an Electromagnetic Exposure Analysis that he prepared, dated May 8, 2020. Mr. Petersohn testified that he had done calculations based on the actual conditions to determine whether the EMF emission levels would be compliant with the FCC General Population Maximum Permissible Exposure (“MPE”) Limit at the adjacent residential properties. He further testified that, assuming worst-case conditions, the cumulative electromagnetic power density level predicted to exist at two nearby residential properties due to the proposed node installation are more than 1,856 times below, and 244 times below, the FCC General Population MPE Limit, for 28 Brentwood Court and 27 Brentwood Court, respectively. Mr. Petersohn testified that the actual levels of electromagnetic exposure are much less, because the analysis assumes both nodes are pointed directly at the adjacent residences (which they are not), both nodes are constantly operating at maximum power output (which they will not be) and that there is no interference with the signal due to weather and landscaping (whereas there are trees between the nodes and the adjacent residences). Given the results of the analysis, Mr. Petersohn opined that the Applicant had demonstrated compliance with the FCC regulations.

28. David Berger, having an address of 28 Brentwood Court, questioned how the Applicant conducted the analysis of EMF exposure when the Applicant had not visited his property. He further questioned when the last time the FCC guidelines had been reviewed and

whether said guidelines contemplated 5G technology. Mr. Petersohn advised that the analysis is based on standards set forth by the FCC and that the guidelines were created in 1996, but had been re-adopted in November of 2019.

29. Lawrence Trachtenbroit, having an address of 21 Brentwood Court, and Dr. William Ratz, having an address of 27 Brentwood Court, questioned whether the proposed 5G nodes would have a negative impact on the wildlife in the area.

30. Barbara Chorazykiewicz, having an address of 195 Madisonville Road, questioned whether there is a way for the residents to test the EMF levels generated by the nodes. She was advised that residents can commission an RF Survey once the nodes are installed.

31. Frank Colasurdo, R.A., of FCArchitects, having a business address of 350 Clark Drive, Suite 304, Mount Olive, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture.

32. Mr. Colasurdo described the location of each of the six proposed nodes and the variance relief requested. He explained that only one of the proposed nodes (Node 15) does not comply with the Land Development Ordinance requirements and, therefore, requires variance relief for its proposed location within required setbacks. Mr. Colasurdo further explained that Node 15 is proposed to be located on a replacement light pole that will be located in the same location as the existing light pole. On questioning as to why Nodes 15 and 16 are not mounted at the same height, he testified that the light poles on which the nodes are being mounted are located such that there is a 5 or 6 inch difference in the grade as between the two poles.

33. The Applicant stipulated, as a condition of approval, to complying with the comments and recommendations set forth in Mr. Schley's April 20, 2020 Review Memorandum, including merging existing lots 2, 3, 5, 6, and 23 into one lot (to be known as Lot 2.01). The Applicant further stipulated to complying with the comments and recommendations set forth in Mr. Quinn's April 8, 2020 Review Letter. As to Comment 7 of Mr. Quinn's Letter, Mr. Colasurdo explained that the wires will not be exposed and a heavy gauge material (Liquid Tight) will be used to protect them from the elements. On questioning, Mr. Colasurdo advised that the Applicant had submitted an application to the Somerset County Planning Board and that same remains pending.

34. Tammy DeVoe, having an address of 274 North Maple Avenue, questioned whether the Applicant would agree to plant additional landscaping to block the EMF signals from reaching the residential properties and was advised that the Applicant would not agree to same given the de minimis EMF levels generated by the nodes. Dr. William Ratz questioned whether Mr. Colasurdo was familiar with the prior test node installation at the Verizon headquarters and was advised that he was familiar with the installation of 16 test nodes at that location. Members of the public questioned why the nodes could not be relocated, whether the Applicant's proposal requires New Jersey Department of Environmental Protection ("NJDEP") approval, and generally how the nodes would impact the neighborhood.

35. William F. Masters, P.P., having a business address of 19 Ironwood Drive, Morris Plains, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of professional planning. Mr. Masters testified that if the test nodes were considered accessory structures for the purpose of ordinance

compliance, the residential zone setback variance would not be required. He further testified that only one of the six proposed nodes requires variance relief and same is a function of the location of the existing structure (light pole) on which the node is proposed to be mounted. Mr. Masters opined that the nodes are small and will be wrapped in concealment film to further mitigate the visual detriment associated with the proposal.

36. Mr. Masters summarized the requested relief and explained the legal standards the Applicant must satisfy to qualify for the requested d(1) use and bulk variance relief. As to the positive criteria, Mr. Masters opined that the Applicant had demonstrated “special reasons” in accordance with Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006) because the Property is particularly suitable for the proposed use. He further opined that the Applicant had also satisfied the positive criteria under Smart SMR v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 329 (1998), by demonstrating that the use promotes the general welfare and that the site is particularly suited for the use. In this regard, Mr. Masters testified that the proposed test nodes are small, will be concealed from view, will not generate sound or create a nuisance and will not require the Applicant to disturb additional land as the nodes will be mounted on existing structures.

37. As to the negative criteria for granting the requested d(1) use variance relief, the Applicant had met the standards set forth both in Sica v. Board of Adjustment of Twp. of Wall, 127 N.J. 152, 156 (1992) (less restrictive) and Medici v. BPR Co., 107 N.J. 1, 21-22 (1987) (more restrictive). Mr. Masters opined that the standard set forth in Sica v. Board of Adjustment of Twp. of Wall, 127 N.J. 152 (1992), rather than the standard set forth in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), governs the request for relief. He explained that, pursuant to the Sica

four part balancing test, the Board must (1) identify the public interest at issue, (2) identify the potential detrimental impacts, (3) determine whether the potential detriments can be mitigated by stipulated to conditions, and then (4) balance the public interest, potential detriment, and proposed mitigation measures. Mr. Masters opined that providing reliable cellular service is in the public's interest and that testing 5G technology advances that interest. He further testified that the Smart Court held that the issuance of an FCC license should suffice for a carrier to establish that the use promotes the general welfare. Mr. Masters further opined that the stipulated to conditions and the small size of the nodes and the proposed concealment film will mitigate the potential negative aesthetic impacts and that, given the proposed mitigation measures, on balance, the public benefits of the proposal outweigh the potential detriment.

38. Mr. Masters further opined that the Applicant, although not required to do so in his opinion, had also demonstrated the negative criteria for a d(1) use variance under the Medici “enhanced quality of proof,” which requires that the Applicant’s proofs and the Board’s findings “must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.” In this regard, he testified that wireless network nodes would be a permitted accessory use if located at the Verizon Corporate Campus, but since the principal use of the Property is a conference inn, the nodes are not ‘naturally and normally incident and subordinate’ to said use. As such, he opined that the proposed use variance can be reconciled because same would be considered a permitted accessory use on an adjacent property. As such, Mr. Masters opined that the Applicant had satisfied both the positive and negative criteria required for the requested d(1) use variance relief.

39. Members of the public questioned why the proposed nodes could not be relocated away from the existing neighborhood, whether the EMF levels could be reduced by the planting of significant landscaping, and whether the Board could investigate the safety of 5G technology before deciding on the merits of the application. The Board Attorney reviewed the standards of proof and advised that the FCC regulations preempt the Board from considering the levels of EMF exposure and the ‘acceptable’ levels of exposure specifically, so long as the Applicant can demonstrate that the proposal complies with the FCC requirements – which it did.

40. The following members of the public were duly sworn and offered testimony as follows:

- Lawrence Trachtenbroit, having an address of 21 Brentwood Court, commented that he did not think the Applicant had demonstrated that the proposed 5G technology is safe and, as a result, requested that the application be denied.
- Jaroslaw Chorazykiewicz, having an address of 195 Madisonville Road, commented that he was concerned about the impact the 5G technology would have on the environment and his neighbors. He requested that the Board delay deciding the application until studies on the safety of 5G technology are completed in 2022.
- Caryn Simmons, having an address of 262 North Maple Avenue, expressed concern that the proposed 5G nodes would have a negative impact on the health of her small children and requested that the Board ensure that sufficient buffering is provided so as to reduce the EMF levels.
- Izabela Trachtenbroit, having an address of 21 Brentwood Court, advised that she also has two small children and is concerned about their well being. She commented that she was putting the Board on notice if there is an adverse impact on the value of her property.
- Dr. William Ratz, having an address of 27 Brentwood Court, commented that when he moved into the Township, the Property was a hotel not a 5G hotspot. He further commented that he is concerned about the safety of his family and the value of his property. Dr. Ratz expressed concern that 5G technology has

not yet been demonstrated to be safe and that other municipalities throughout the country have tabled development proposals involving 5G technology.

- Todd Edelstein, having an address of 172 Riverside Drive, commented that he is also concerned about the safety of 5G technology and requested that the Applicant stipulate to installing shielding behind proposed Node 15 to prevent increased EMF levels near the adjacent residential dwellings.
- David Berger, having an address of 28 Brentwood Court, requested that the Board take notice of the significant opposition from the residents to the Applicant's proposal and consider denying the requested relief until the technology is proven to be safe. Mr. Berger contended that the FCC guidelines were out of date and should not be relied on by the Board as a basis for granting the application. He requested that the Applicant plant mature trees along the shared property lines adjacent to the residential dwellings and conduct annual testing of EMF levels during the winter and summer seasons.
- Barbara Chorazykiewicz, having an address of 195 Madisonville Road, commented that she is concerned about the impact of the proposal on the value of the adjacent residential properties. She further commented that she hoped that the Township would retain an expert to study the safety of 5G technology, particularly given the location of the test nodes and the adjacent daycare center. She requested that the Board not decide the application until appropriate studies had been conducted.

41. Mr. Schneider provided a summary of the testimony given by Mr. Stern, Mr. Petersohn, Mr. Colasurdo and Mr. Masters. He contended that the Applicant had demonstrated an entitlement to the requested d(1) use variance relief under the less restrictive Sica standards and the more restrictive Medici standards of proof. Mr. Schneider explained that the FCC issued a Declaratory Ruling and Third Report and Order adopted September 26, 2018, which provides that the FCC is committed to removing regulatory barriers that unlawfully inhibit the deployment of 5G technology. The Declaratory Ruling goes on to provide that municipalities must encourage rapid deployment of new technologies, such as 5G, and remove barriers preventing such deployment. Mr. Schneider reminded the Board that Mr. Petersohn had testified

that EMF levels are regulated by the FCC and the levels associated with the Applicant's proposal are significantly less than what the FCC had determined to be the maximum permissible level of exposure.

42. Mr. Schneider contended that the Applicant had established that the deployment of 5G technology is a critically important public interest and that the Property is particularly suited for the proposed location of the 5G test nodes. He explained that the nodes would have a minimal impact on the aesthetics of the neighborhood given their small size and the proposed concealment measures, while providing an important benefit to the public. As such, Mr. Schneider asked that the Board grant the requested d(1) use variance and associated bulk (setback) variance relief.

BOARD DECISION

43. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has demonstrated its entitlement to the requested preliminary and final site plan approval and d(1) use and bulk variance relief sought herein.

The d(1) Use Variance – Positive Criteria:

44. As to the d(1) use variance relief for the proposed 5G test nodes, the Board initially recognizes that, while an applicant seeking to install a wireless telecommunication facility ordinarily would be permitted to demonstrate an entitlement to the requested relief pursuant to the less restrictive standards set forth in Smart SMR v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 329 (1998), here, the proposed test nodes do not constitute wireless telecommunication facilities, because they are not being installed to provide any wireless communications services to the general public. As such, the Board concludes that the Applicant

must demonstrate the positive and negative criteria for the requested d(1) use variance relief pursuant to the more restrictive standards of proof set forth in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987). The Board finds that the Applicant has satisfied the positive criteria required for the grant of a d(1) use variance under the enhanced quality of proof pursuant to the Medici decision.

45. The Board notes that New Jersey courts recognize three circumstances in which the “special reasons” required for such a variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer “undue hardship” if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006). The Board finds that, even assuming that the proposed use does not constitute an inherently beneficial use, it, nevertheless, serves the general welfare and the Site is particularly suitable for the installation of the proposed six 5G test nodes.

46. In regard to its site suitability finding, the Board considers the unobtrusive nature of the test nodes, the proposed location of the nodes on existing structures, the existing and stipulated to landscape screening, and the relatively modest impact of the proposal on adjacent residential properties. Additionally, the Board notes that the location of the nodes will allow the Applicant to conduct testing and research relating to the Applicant’s 5G network, which is of significant public interest. The Board accepts the unrefuted expert planning testimony provided by Mr. Masters that the nodes will not result in increased traffic, noise, odor, or other nuisance

conditions and, instead, will promote a desirable visual environment through creative development techniques and good civic design and arrangement. The Board also accepts the unrefuted expert radio frequency testimony of Mr. Petersohn that the nodes are highly directional and must be located near the area throughout which they are designed to provide coverage, such that they cannot be relocated further from the adjacent residential properties.

47. The Board further accepts Mr. Petersohn's testimony that, assuming worst-case conditions, the cumulative electromagnetic power density level predicted to exist at two nearby residential properties due to the proposed node installation are more than 1,856 times below, and 244 times below, the FCC General Population MPE Limit, for 28 Brentwood Court and 27 Brentwood Court, respectively. Here, the Board recognizes that the Applicant is required to demonstrate compliance with the FCC guidelines and that said guidelines preempt the Township from imposing stricter regulations regarding EMF levels. Finally, while the Board appreciates the concern expressed by the members of the public as to the safety of 5G technology, no credible expert testimony to refute the Applicant's professionals' testimony was provided.

48. Based upon the forgoing, the Board concludes that the Applicant has satisfied the positive criteria required for a d(1) use variance.

The d(1) Use Variance – Negative Criteria:

49. As to the negative criteria, the Board recognizes that in d(1) use variance cases the Applicant must demonstrate the negative criteria with "an enhanced quality of proof." Specifically, in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), the Supreme Court required that an applicant must show:

in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicant's proofs and the board's findings must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district

50. The Board finds that the Applicant has satisfied its burden of demonstrating that the requested relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Master Plan and the applicable provisions of the Land Development Ordinance. As to the "substantial detriment" prong of the negative criteria for d(1) use variance relief, the Board finds that the Applicant has demonstrated that the proposed 5G test nodes will not have a substantially detrimental impact on the character of the subject neighborhood, given the size and location of the proposed nodes, as well as the existing and proposed landscape buffering.

51. While the Board considers the concerns expressed by the members of the public as to the safety of 5G technology, the Board is constrained to accept the unrefuted expert testimony provided by Mr. Petersohn, the Applicant's RF expert, that the proposed nodes levels of EMF exposure are compliant with the FCC Guidelines and, therefore, will not result in substantial detriment to the health and welfare of the immediately adjacent residential neighbors. In this regard, the Board recognizes that, based on the MPE limits of EMF, as set forth in the FCC Guidelines, proposed Nodes 15 and 43, cumulatively, will generate EMF levels more than 244 times below the MPE limit as to 27 Brentwood Court and more than 1,856 times below the MPE limit as to 28 Brentwood Court.

52. As to the "substantial impairment" prong of the negative criteria for d(1) use

variance relief, and the requisite enhanced quality of proof under the Medici decision, the Board finds that the Applicant has demonstrated that the Applicant's proposal will not result in substantial impairment of the Master Plan and Land Development Ordinance. The Board recognizes that, if the test nodes were considered "antenna" pursuant to Section 21-17A.2 of the Land Development Ordinance, the Applicant would comply with all of the municipal zoning requirements relating to wireless telecommunication facilities. The Board accepts the unrefuted expert planning testimony of Mr. Masters that the test nodes are not inconsistent with the Master Plan or Land Development Ordinance because the installation of wireless telecommunications facilities is not prohibited in the E-1 Zone. The Board further finds that granting the requested relief certainly would not result in a rezoning of the Property by variance, rather than ordinance, such that the relief requested would not rise to the level of a substantial impairment of the Master Plan or the Zoning Ordinance.

The c(2) Bulk Variance Relief:

53. The Board further finds that the Applicant has satisfied the positive criteria for "c(2)" or "flexible c" variance relief for the requested setback deviations for the location of proposed Node 15. The Board finds that the Applicant has satisfied its burden of demonstrating that the purposes of the MLUL will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh the detriments associated therewith. In this regard, the Board accepts Mr. Masters' unrefuted expert planning testimony that the proposal advances purposes (a) and (i) of the MLUL, because the proposed use would improve the general welfare of the public and promote a desirable visual environment through creative development techniques and good civic design. In this regard,

the Board concurs with Mr. Masters' unrefuted expert testimony that the nodes will be unobtrusive given the proposed concealment film and the overall locations of the nodes together with the existing and proposed landscape screening. The Board further recognizes that the Applicant's proposal does not result in any new construction, but rather the replacement of two existing light poles in the same location in which they are presently located. Additionally, the Board finds that the relatively modest visual detriments are mitigated by the stipulated conditions, including the requirement of returning to the Board if there is a change in the physical dimensions or radio cumulative power such that the power exceeds 60 DBM, a post installation test of the nodes to ensure EMF levels are compliant with FCC guidelines, and onsite supplemental landscaping to the extent deemed necessary in the discretion of the Township Engineering Department.

54. As to the negative criteria for "c(2)" variance relief, the Board finds that the Applicant has demonstrated that the proposal will not result in either substantial detriment to the public good or substantial impairment of the zone plan, for the reasons set forth above relative to the d(1) use variance analysis.

The Preliminary and Final Site Plan Approval:

55. The Board further finds that the Applicant has complied with the requirements set forth in Section 21-54 of the Land Development Ordinance and N.J.S.A. 40:55D-46 and 50. As such, the Board finds that good cause exists for granting the requested preliminary and final site plan approval, subject to the conditions of approval set forth below.

WHEREAS, the Board took action on this application at its meeting on June 22, 2020, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 5th day of August, 2020, that the application of NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
2. The Board reserves the right to require the Applicant to submit an application for any required additional approval if, in the opinion of the Township Planner or Township Engineer, the Applicant proposed a modification to the approved installation that substantially changes the physical dimensions of the approved installation, and the Board expressly reserves jurisdiction to address same;
3. If, as a result of the Applicant's modifications to its facility, the radio cumulative power (W) exceeds 60 dBm, then the Applicant shall submit a Compliance Report from a recognized expert that the subject site remains in compliance with all applicable FCC guidelines;
4. The Applicant shall conduct a one time post-installation test of EMF levels at the closest residential property line to ensure that such levels are in strict compliance with FCC regulations within 60 days of the completion of installation of the test nodes, same to be conducted prior to the issuance of a certification of approval, subject to the review and approval of the Township Engineering Department;
5. The Applicant shall be required to plant supplemental landscape buffering and screening between the residential property line and proposed Node 15 as determined to be necessary in the reasonable discretion of the Township Planner;
6. The Applicant shall amend the Node 15 and 16 elevations on sheets Z9 and Z10 to specify that all equipment and hardware attached to the light poles, including the proposed fiber box, OVP box, digital electrical receiver, and J-box, will be painted or otherwise camouflaged to match the color of the light pole to the extent possible without voiding manufacturers' warranties, same to be subject to the review and

approval of the Township Planner;

7. The Applicant shall revise the plans to depict all Township-regulated stream buffer conservation areas and NJDEP-regulated riparian zones, which are shown on the separately submitted Conservation Easement Map. The Applicant shall comply with the Township's Stream Buffer Conservation Ordinance as follows:
 - a. Three proposed nodes are located on existing structures within zone two of a stream buffer conservation area, including Node 13 (parking deck), Node 15 (replacement light pole) and Node 16 (light pole). Pursuant to Section 21-14.4.e.1 of the Land Development Ordinance, an existing nonconforming structure within a stream buffer conservation area may be continued provided the existing footprint is not enlarged. In each of the three proposed cases, the footprint of the existing structure shall not be enlarged; and
 - b. Underground utilities (electric and fiber) servicing Nodes 15 and 16 are proposed to be located within zones one and two of a stream buffer conservation area. Pursuant to Section 21-14.4.c.1(b)(1) (as to zone one) and Section 21-14.4.c.2(b)(3) (as to zone two), public utility transmission lines are permitted in zones one and two of a stream buffer conservation area provided that the land disturbance is the minimum required to accomplish the use, and subject to approval of a stream buffer management plan. The Applicant's stream buffer management plan, which includes soil erosion and sediment control measures in all areas of land disturbance, shall be amended to include proposed vegetation and any other measures necessary to offset the proposed disturbance to the stream buffer conservation area in accordance with Section 21-14.4.h.1 of the Ordinance, same to be subject to the review and approval of the Township Planner.
8. The Applicant shall obtain NJDEP approval of the pending general permit application and submit copies of the application materials and documents referenced therein, prior to issuance of any permit for Nodes 15 and 16, same to be subject to the review and approval of the Township Engineering Department;
9. Prior to issuance of any permit for Nodes 15 and 16, the Applicant shall provide a survey of existing trees along the proposed underground utility trench and submit a tree protection plan, and if applicable, a tree removal/replacement plan, same to be subject to the review and approval of the Township Planner;
10. Pursuant to Section 21-9.3 of the Ordinance, when two lots are combined into a single parcel of land for the purpose of a site plan submission which is approved by the Board, the lots shall be combined as one lot unless subsequently subdivided. Therefore, the Applicant shall file a deed merging existing lots 2, 3, 5, 6 and 23 into

one lot (to be known as lot 2.01). The merger deed shall be subject to review and approval by the Township Engineering Department and Township Attorney and shall be filed with the Somerset County Clerk prior to issuance of any permits;

11. The Applicant shall amend the plans to specify that the wiring from the conduit terminus to the light pole on which Nodes 15 and 16 are located is insulated (i.e., by using a heavy gauge material such as Liquid Tight), same to be subject to the review and approval of the Township Engineering Department;
12. The Applicant shall submit all necessary information to the Somerset County Planning Board and shall comply with any requirements set forth in any approval received therefrom, same to be subject to the review of the Township Engineering Department;
13. The site shall remain subject to all conditions of prior Planning Board and Board of Adjustment approvals not eliminated or modified by approval of the current application;
14. The soil erosion and sediment control plan shall be subject to approval by the Somerset-Union Soil Conservation District, if applicable, or the Township Engineering Department, prior to issuance of any permits;
15. The Applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity;
16. The Applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department;
17. Development fees shall be required pursuant to Section 21-86 of the Ordinance, as applicable;
18. Pursuant to the Board's Rules and Regulations, the following time limitation conditions shall apply:
 - a. Revisions to Plans. Revisions to the submitted plans and other documents, as may be required as conditions of approval, shall be made, and the plans signed by the Board Secretary, within six months of the adoption of the Board's resolution. In the event that the applicant fails to make the revisions as required and/or fails to obtain signatures on the plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void.

- b. Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy. The applicant shall apply for and obtain a construction permit within two years of the adoption of the Board's resolution. If during said two year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The applicant shall also have one year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall automatically expire and become null and void;
19. The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State. The Applicant shall obtain permits and/or approvals from all applicable agencies and/or departments;
20. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein; and
21. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within two years of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Eorio, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on August 5, 2020.

Cyndi Kiefer, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: August 5, 2020

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**DAVID and KRISTINE KANGAS
Case No. ZB20-009**

RESOLUTION

WHEREAS, **DAVID and KRISTINE KANGAS** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of an inground swimming pool with attached spa, pavilion with outdoor kitchen and surrounding patio/walkway to the rear of the existing dwelling located on property identified as Block 2701, Lot 11 on the Tax Map, more commonly known as 134 South Alward Avenue (the “Property”):

A variance to locate an in-ground swimming pool such that it is not behind the rear building line of an adjacent dwelling, in violation of Section 21-18.1 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 8, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicants and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board reviewed the application and deemed it to be complete.
2. The Property is located in the R-2 (2 acre) Residential Zone and consists of 2.019 acres. It fronts on S. Alward Avenue at the intersection of S. Alward Avenue and Dogwood Way. The Property is presently improved with a two-story, single-family residential dwelling and an associated driveway. The existing dwelling was completed in 2019 after receiving variance relief for improvable lot area, driveway grade, and steep slope disturbance granted by the Board in 2018

(#ZB18-024 Horowitz & Frasher, LLC).

3. The Applicants propose to construct an irregularly shaped 24 foot by 37.5 foot (633 square foot) inground swimming pool with attached 6 foot diameter (28 square foot) spa, a 16 foot by 21 foot (336 square foot) pavilion with outdoor kitchen and surrounding patio/walkway to the rear of the existing dwelling.

4. The Applicants' proposal is depicted on a Proposed Pool Plot Plan and Grading Plan prepared by George R. Gloede, Jr., P.E., dated February 10, 2020, last revised May 1, 2020, same consisting of two (2) sheets; a Pool Plan prepared by Premier Pools and Spas, dated January 13, 2020, unrevised, same consisting of one (1) sheet; Sketches of 134 S. Alward Avenue Proposed Pool and Pavilion, unsigned, undated, same consisting of one (1) sheet; a compendium of four (4) photographs of the Property as viewed from 142 and 124 South Alward Avenue; and an Application for Permit to Construct/Alter/Repair and Individual Subsurface Sewage Disposal System, dated May 4, 2020.

5. The pool location variance is governed by the criteria of N.J.S.A. 40:55D-70(c).

6. David Schley, P.P., A.I.C.P, the Board Planner, and Thomas J. Quinn, P.E., C.M.E., the Board Engineer, both were duly sworn according to law.

7. David and Kristine Kangas, the Applicants, having an address of 134 S. Alward Avenue, were duly sworn according to law. Mrs. Kangas testified that the Applicants purchased the Property with the intent to construct a pool in October of 2019. She explained that the proposal includes an inground pool and spa, with a patio area including a kitchen, gas grill, and wood burning fireplace. Mrs. Kangas further explained that the proposed location of the pool and associated improvements is the best location because complying with the pool location requirements such that the proposed pool would be to the rear of the adjacent dwellings would

require significant tree removal. She testified that the existing trees are mature trees and new trees planted by the developer that provide a buffer between the pool area and the adjacent properties.

8. On discussion of the impact on the adjacent properties, Mrs. Kangas introduced into evidence, as **Exhibit A-1**, four photographs taken by Mr. Kangas on July 8, 2020 showing the existing landscaping. Mr. Kangas confirmed that the photographs constituted accurate depictions of the Property as it presently exists. Referencing Exhibit A-1, Mrs. Kangas explained that the trees shown in the photographs that are marked with a red x would have to be removed if the pool were to be located in a conforming location.

9. Dickson Munds, of Premier Pools and Spas, having a business address of 9 Upper Kingtown Road, Pittstown, New Jersey, was duly sworn according to law. Mr. Munds described the Applicant's proposal and addressed the comments and questions set forth in the July 6, 2020 Review Memorandum prepared by the Board Planner, Mr. Schley, and the July 7, 2020 Review Letter prepared by the Board Engineer, Mr. Quinn. As to Comment 4 of Mr. Schley's Memorandum, Mr. Munds testified that he was unsure whether the proposed drywells could be relocated to avoid disturbing the existing trees. On discussion, the Applicants stipulated, as a condition of approval, to cooperating in good faith with the Township Engineering Department to ascertain whether the drywells could be relocated to minimize tree disturbance and, if so, to relocating them, same to be subject to the review and approval of the Township Engineering Department. Mrs. Kangas testified that the plans submitted to the Board only depict the existing trees and stipulated, as a condition of approval, to submitting a tree protection, removal, and replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance. The Applicants stipulated to complying with all of the comments in Mr. Schley's Memorandum.

10. As to Mr. Quinn's Review Letter, the Applicants stipulated to complying with the comments set forth therein. Specifically, as to Comment 3 regarding the location of any existing drywells, Mrs. Kangas advised that she knows of one existing drywell and will have the plans revised to depict same, as well as any other drywells, to ensure that the proposed improvements do not interfere with them. The Applicants also stipulated, as a condition of approval, to complying with the Best Management Practices for pool water discharge.

11. On questioning, Mrs. Kangas testified that the Applicants had spoken to their adjacent neighbors and none of them objected to the proposal. On questioning as to whether the Applicants propose any additional pool lighting, Mrs. Kangas advised that there are no plans to provide lighting aside from in the cabana area, and the Applicants stipulated that any such lighting would be downward directed or appropriately shielded or recessed to reduce light spillage onto the adjacent properties.

12. The Applicants confirmed that the proposed pool cannot be located in a conforming location because the dwellings on either side of the Property have greater front-yard setbacks, such that the pool would have to be located a significant distance from the existing dwelling to comply with the requirement that the pool be located behind the rear building line of said adjacent dwellings.

13. No member of the public commented on, or objected to, the Applicants' proposal.

DECISION

14. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief as to the pool location both under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

15. As to the positive criteria for the "c(1)" or "hardship" variance for the pool location,

the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants. The Board finds that the exceptionally unique physical features affecting the Property include the layout and configuration of the existing lots/dwellings. Here, the proposed pool is not to the rear of the adjoining dwellings on Lot 10 (124 South Alward Ave) to the north and Lot 12 (142 South Alward Ave) to the south. The proposed pool would have to be moved approximately 40 feet toward the rear of the Property to comply with the pool location requirement as it relates to Lot 10, and approximately 63 feet toward the rear to comply with the pool location requirement as it relates to Lot 12. Therefore, the Board determines that the requested variance from such strict application of the regulations is warranted so as to relieve the Applicants from such exceptional difficulties or undue hardship.

16. The Board recognizes that the legislative intent underlying the pool location ordinance was to locate more active uses in rear yards and to “line up” rear yard uses for adjacent neighbors. The Board concludes that requiring the Applicants to comply with the pool location requirement would not serve the intent of the pool location ordinance any better than it would be served by locating the pool in the location proposed by the Applicants. The Board further finds that the hardship that would result from the strict application of the zoning ordinance provision would not be by virtue of a condition that was “self-created” by the Applicants or any predecessor-in-title.

17. As to the positive criteria for “c(2)” or “flexible c” variance relief, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and

that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that locating the proposed pool in a conforming location would require a greater amount of land disturbance and the removal of numerous mature trees. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below.

18. As to the negative criteria required for variance relief pursuant to subsections c(1) and c(2), the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will be in character with the existing neighborhood and will not have a negative impact on the surrounding properties. In this regard, the Board finds that the pool will be sufficiently screened both by the existing and proposed landscaping. The Board also notes that there was no public opposition to the proposal and no objection from the adjacent neighbors. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools are permitted accessory structures. The Board finds in this regard that the requested deviation is relatively modest in nature and certainly does not rise to the level of constituting a rezoning of the Property.

19. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested bulk variance relief, under both of the

alternative bases for such relief under N.J.S.A. 40:55D-70(c).

WHEREAS, the Board took action on this application at its meeting, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 5th day of August, 2020, that the application of **DAVID and KRISTINE KANGAS**, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- (2) The Applicants shall cooperate in good faith with the Township Engineering Department to ascertain whether the proposed drywells can be relocated so as to minimize the removal of trees, and, if such relocation is possible, shall relocate the proposed drywells, same to be subject to the review and approval of the Township Engineering Department;
- (3) The Applicants shall submit a tree protection, removal, and replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance. If additional tree replacement is recommended due to the installation of the drywells and/or to provide sufficient buffering, the Applicants shall provide same in accordance with the reasonable requests of the Township Planner and/or Township Engineering Department;
- (4) The Applicants shall provide soil erosion and sediment control measures and stormwater infiltration measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance and same shall be subject to further review and approval of the Township Engineering Department prior to issuance of a construction permit. The Applicants shall also provide perc test results in support of the proposed stormwater infiltration measures at that time;
- (5) The Applicants shall remove soil from the pool excavation from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, and same shall be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (6) The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the

Environmental Commission attached to the July 6, 2020 Review Memorandum of the Township Planner;

- (7) The Applicants shall revise the plans to show a discreet swale within which the proposed series of lawn inlets on the downstream side of the pool and patio area can be located to ensure that runoff is captured as anticipated. The Board Engineer notes that there is a potential for runoff to bypass the few inlets depicted on the plan and thus the detention system seems high given the current grading. As such, the proposed stormwater management system design shall be subject to further review and approval of the Township Engineering Department;
- (8) The Applicants shall submit drawdown calculations demonstrating that the drywells can discharge their stored volume within 72 hours, and same shall be subject to the review and approval of the Township Engineering Department;
- (9) The Applicants shall revise the plans to indicate the location of any existing drywells;
- (10) The Applicants shall revise the plans to indicate that, based on the limit of disturbance depicted on the plans, certification will be required by the Soil Conservation District;
- (11) The Applicants shall revise the plans to indicate that any gate within the proposed pool fence shall contain a self-latching mechanism;
- (12) Any lighting in the pool or cabana area shall be downward directed or appropriately shielded or recessed so as not to be a nuisance to adjoining properties;
- (13) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (14) The Applicants shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
- (15) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Breslin, Eorio, Kraus, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of August 5, 2020.

Cyndi Kiefer, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: August 5, 2020.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**SCOTT REYNOLDS and MARTHA ELLISON
Case No. ZB20-010**

RESOLUTION

WHEREAS, **SCOTT REYNOLDS and MARTHA ELLISON** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance relief in connection with the replacement of an existing open deck with a covered deck/screened porch and a patio at the rear of the existing dwelling located on property identified as Block 5201, Lot 2 on the Tax Map, more commonly known as 36 Kensington Road (the “Property”):

A variance for a proposed rear-yard setback of approximately 70 feet, whereas the existing rear-yard setback is approximately 70 feet, and the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 8, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicants and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board reviewed the application and deemed it to be complete.
2. The Property is an irregularly shaped, 1.018 acre lot, located in the R-4 (1 acre) Residential Zone with frontage on Kensington Road. It is currently improved with a two-story, single-family dwelling, wood deck, wood shed, asphalt driveway, and associated walkways. The

Property is encumbered by a 15 foot wide storm sewer easement along the easterly portion of the Property.

3. The Applicants propose to replace an existing 16 foot by 44 foot (704 square foot) open deck with a 16 foot by 24 foot (384 square foot) covered deck/screened porch and a 16 foot by 20 foot (320 square foot) patio at the rear of the existing dwelling.

4. The Applicants' proposal is depicted on unsigned, undated deck plans and a Survey prepared by John J. Vida, P.L.S., dated March 11, 2011, unrevised, same consisting of one (1) sheet. The Applicants also submitted a letter from Greg Roycroft of Roycroft Construction providing additional information as to the existing and proposed impervious coverage and two photographs of the existing deck.

5. The requested variance for the rear-yard setback deviation is governed by the criteria of N.J.S.A. 40:55D-70(c).

6. David Schley, A.I.C.P./P.P., the Board Planner, and Thomas J. Quinn, P.E., C.M.E., the Board Engineer, both were duly sworn according to law.

7. Scott E. Reynolds, Esq., one of the Applicants, having a business address of 94 South Finley Avenue, Basking Ridge, New Jersey, entered his appearance. He represented that he and his wife have lived at the Property since 2011 and are seeking to replace their existing deck with a covered deck/screened porch and a patio. Mr. Reynolds advised that a small portion of the proposed deck and patio are located within the required 75 foot rear-yard setback because the rear property line is on a diagonal. He explained that he believes the proposed rear-yard setback will be 73 feet, but that same is an approximation. The setback of the existing deck is shown on the submitted survey, however, the exact setback of the proposed deck has not been verified by his surveyor. The Board Planner, Mr. Schley, confirmed that the proposed setback is somewhere

between 70 and 75 feet and will likely be approximately 73 feet provided the improvements are constructed as shown on the plans. Mr. Schley further confirmed that the proposed encroachment is less of an encroachment than what currently exists. The Applicants requested that the Board grant a variance for a 70 foot, rather than 73 foot, rear-yard setback given that the existing rear-yard setback is approximately 70 feet and this would afford the Applicants sufficient leeway at the time of construction.

8. The Board Engineer, Mr. Quinn, confirmed that the Applicants' proposal results in a net increase of 704 square feet of impervious cover and is therefore exempt for purposes of stormwater management.

9. On questioning by the Board, Mr. Reynolds advised that the photographs submitted with the application materials were taken by him on April 12, 2020 and constitute an accurate depiction of the Property as it presently exists. On questioning as to whether the proposed porch is smaller than the existing deck, Mr. Reynolds confirmed that it is. He further confirmed that the proposal does not require the removal of existing trees. On questioning, Mr. Reynolds advised that he had spoken with his neighbors and that none of them objected to the proposal.

10. No member of the public commented on, or objected to, the Applicants' proposal.

DECISION

11. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the rear-yard setback deviation both under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

12. As to the c(1) positive criteria for the rear-yard setback deviation, the Board finds that the Applicants have demonstrated that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the

owners of the Property. In this regard, the Board recognizes that the trapezoidal shape of the Property and the orientation of the lawfully existing dwelling thereon make it exceptionally difficult to construct the proposed improvements in a conforming location. The Board further recognizes that the adjacent properties are developed and that no additional land is available to bring the Property into, or closer to, conformity. The Board finds that the Applicants have demonstrated that the hardship that would be incurred by them if the zoning regulations were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have demonstrated the positive criteria for subsection c(1) variance relief.

13. As to the positive criteria for “c(2)” or “flexible c” variance relief, the Board finds that the proposed replacement of the existing deck will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. Initially, the Board notes that Section 21-18A of the Land Development Ordinance defines an “open deck” as “a raised platform not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open”, and provides that such a deck may extend into the minimum required rear yard provided certain conditions are met, including a maximum deck area of 600 square feet. The Board recognizes that the Applicants’ existing deck is an open deck, however, it exceeds 600 square feet and is, therefore, not exempt from the rear-yard setback requirement. The Board further recognizes that the proposed covered deck, while only 384 square feet, is not an open deck and therefore is also not exempt from the rear-yard setback requirement, thus requiring a variance.

14. The Board finds that the benefits to be derived from this proposal include providing a desirable visual environment, providing adequate light, air and open space, promoting the general welfare, and enhancing the visual compatibility of the Property with adjoining properties. In this

regard, the Board recognizes that the proposed covered deck/screened porch and patio will improve the appearance of the Property, provide aesthetic benefits to the neighborhood, increase the safety and functionality of the outdoor living space, and otherwise improve the housing stock in the community. As such, the Board further finds that the benefits to be derived from the proposed development will substantially outweigh the relatively modest detriments associated with the proposal, particularly given the stipulated to conditions set forth below. Based upon the forgoing, the Board finds that the Applicants have satisfied the positive criteria for c(2) variance relief for the requested zoning deviation.

15. As to the negative criteria, the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan or zoning ordinances. The Board considers, as to the first prong of the negative criteria, that the rear-yard setback deviation is relatively modest (approximately 70 feet proposed; 75 feet required) and that the modest detriment is mitigated by the conditions stipulated to by the Applicants, and set forth below, and the Board further recognizes that no member of the public commented on, or objected to, the application. As to the second prong of the negative criteria, the Board recognizes that given that residential decks and porches are permitted structures and that the magnitude of the bulk variance relief sought is so modest that it certainly does not rise to the level of constituting a rezoning of the Property.

WHEREAS, the Board took action on this application and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 5th day of August, 2020, that the application of **SCOTT**

REYNOLDS and MARTHA ELLISON, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
2. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
3. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State, including but not limited to NJDEP regulations and permit requirements; and
4. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Breslin, Eorio, Kraus, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on August 5, 2020.

CYNTHIA KIEFER, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: August 5, 2020

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**LCB SENIOR LIVING HOLDINGS II, LLC
Case No. ZB19-010**

RESOLUTION - EXTENSION

WHEREAS, **LCB SENIOR LIVING HOLDINGS II, LLC** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for an extension of the time to submit revised plans subject to the variance approval heretofore granted to it, pursuant to a Resolution adopted by the Board on November 6, 2019 in Case No. ZB19-010 (the “2019 Resolution”), the aforesaid approval pertaining to construction of a three-story, approximately 92,185 square foot assisted living and memory care facility, located on property identified as Block 2301, Lot 31 on the Township Tax Map, more commonly known as 219 Mount Airy Road (the “Property”); and

WHEREAS, Condition 41A of the 2019 Resolution provides:

A. Revisions to Plans. Revisions to the submitted plans and other documents, as may be required as conditions of approval, shall be made, and the plans signed by the Board Secretary, within nine (9) months of the adoption of the Board’s resolution. In the event that the Applicant fails to make the revisions as required and/or fails to obtain signatures on the plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void; and

WHEREAS, pursuant to Condition 41A, the revised plans were to be submitted within nine months of the date of adoption of the 2019 Resolution, and thus by August 6, 2020; and

WHEREAS, by letter dated June 11, 2020, Thomas J. Malman, Esq., on behalf of the Applicant, advised that, as a result of delays associated with the COVID-19 pandemic, the Applicant has been unable to secure necessary approvals from the New Jersey Department of Environmental Protection and the Bernards Township Sewerage Authority, and, therefore, unable

to revise and submit the plans in accordance with Condition 41A; and

WHEREAS, Mr. Malman, on behalf of the Applicant, requested a nine (9) month extension of the August 6, 2020 deadline, such that the revised plans shall be submitted by May 6, 2021; and

WHEREAS, the Board, by a vote of 6 to 0, finds that the Applicant has demonstrated sufficient “good cause” for an extension of nine (9) months to revise the plans and have said plans signed by the Board Secretary, in accordance with Condition 41(A) of the Original Resolution.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bernards, on this 5th day of August, 2020, that the application of LCB Senior Living Holdings II, LLC, for an extension of time to submit revised plans pursuant thereto be, and the same is hereby, extended until May 6, 2021, such extension to be subject to all of the same conditions as are set forth in the Board’s 2019 Resolution, to the extent same are not inconsistent therewith.

ROLL CALL VOTE:

Those in Favor: Breslin, Cambria, Eorio, Kraus, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of August 5, 2020.

CYNTHIA KIEFER, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: August 5, 2020

TOWNSHIP OF BERNARDS
2020 ZONING BOARD OF ADJUSTMENT APPLICATION

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

1. APPLICANT: Rob & Sue McCrone

Address: 55 Decker St Basking Ridge NJ 07920

Phone: (home) 908-766-0144 (work) — (mobile) 908-216-5172

Email (will be used for official notifications): susan.mccrone01@gmail.com

2. OWNER (if different from applicant): _____

Address: _____

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

3. ATTORNEY: _____

Address: _____

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

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

Name: _____ Profession: _____

Address: _____

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

5. PROPERTY INFORMATION: Block(s): 1302 Lot(s): 26 Zone: R-7

Street Address: 55 Decker St. Total Area (square feet/acres): .26 acre

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

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

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

☒ No ☐ Yes (if yes, explain) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: existing property is a single family residence with a one car detached garage with a single lane driveway. We would like to widen the driveway to allow for 2 car side by side off road parking and extra 2 feet width to the street.

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):
requesting bulk variance (NJSA 40:55D-70c) for 10+ coverage ordinance # 21-15.1(d) 1+ table 501 and 5 Foot property line for driveway ordinance # 21-38.1(d)

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

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

APPLICANT(S) SIGN HERE:

I/we, Rob McCrone and Sue McCrone hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

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

Sworn and subscribed before me, this 8th day of April, 2020.

[Signature]
MICHELLE L. McFADDEN
Notary NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 16, 2024

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 _____, 2020.

Notary

**TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION**

RECEIVED

MAR 26 2020

PLANNING/ZONING BOARDS
OFFICE'S DECISION

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

1. APPLICANT: Lincoln Avenue Gospel Hall

Address: c/o Mr. James E. Druckenmiller, 142 Bayberry Lane, Watchung, New Jersey 07069

Phone: (home) (908) 298-8900 (work) _____ (mobile) _____

Email (will be used for official notifications): jimd@versatile-us.com

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

Address: _____

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

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

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

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

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

Name: William G. Hollows Profession: Professional Engineer

Address: Murphy & Hollows Associates LLC, 192 Central Avenue, Stirling, New Jersey 07980

Phone: (908) 580-1255 Email (will be used for official notifications): murphyhollows@gmail.com

5. PROPERTY INFORMATION: Block(s): 8903 Lot(s): 36 Zone: R-4

Street Address: 3265 Valley Road Total Area (square feet/acres): 39,640sf / .91ac

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain or attach Board resolution) (None known to Applicant) _____

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

Please see Addendum

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

☒ No ☐ Yes (if yes, explain and attach copy) (None known to Applicant)

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

Please see Addendum

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

Please see Addendum

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

Please see Addendum

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

APPLICANT(S) SIGN HERE:

I/we, James Druckenmiller, on behalf of and Lincoln Avenue Gospel Hall hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

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

Sworn and subscribed before me, this 25th day of March, 2020.

[Signature]
Notary

Frederick B. Zelle
An Attorney at Law of the
State of New Jersey

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

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

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

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

Signature of owner(s): _____

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

Notary

ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION
LINCOLN AVENUE GOSPEL HALL
3265 VALLEY ROAD, BLOCK 8903, LOT 36

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

4. [Other Professionals]

John J. Haeberle, Architect
John J. Haeberle AIA, LLC
385 Route 24, Suite 3-D
Chester, New Jersey 07930
(908) 955-7143
john@haeberle-aia.com



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

Lot Area	1 acre required; .91 acres existing
Lot Width	200' required; 150' existing
Front Yard Setback	75' required; 29.6' existing
Accessory Side Yard Setback	15' required; 7.1' existing
Accessory Rear Yard Setback	20' required; 6.1' existing

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

The Applicant seeks preliminary and final site plan approval with a "D-3" conditional use variance.

The subject property hosts a small, single family ranch home in the northwest corner, very close to Valley Road (County Road 512), and a small shed in the rear yard (in the southeast corner of the property). The property is flanked to its west by a gasoline station / auto repair shop and to its east by a single family home situated well to the east on its lot (away from the subject property), with a detached three-car garage / barn situated closer to the subject lot.

The Applicant wishes to use the existing home as a house of worship for twice-weekly relatively brief prayer services. This is a conditionally permitted use in the R-4 Zone. The property does not meet, or the Applicant cannot meet, certain of the conditions, and a D-3 use variance is therefore required for approval of this application. Specifically, the conditions set forth in Section 21-12.3(f) of the zoning ordinance, which sets forth the conditions for the house of worship conditional use, can or cannot be met, as follows:

1. The minimum lot area shall be four acres. **Cannot be met, due to existing lot size (.91 acres).**
2. The maximum floor area ratio for all buildings shall be 10%. **Met (only 2.6%).**
3. The maximum coverage shall be 15%. **Cannot be met due to Applicant's parking requirements. Proposed coverage is 28.4%, most of which is attributed to the parking lot.**
4. No house of worship shall be located within 100 feet of any property line. However, the setback requirements for a separate clergyman's residence located on the same premises as a house of worship need only satisfy the requirements established for other residences in the zone in which it is located. **The location of the existing building does not meet this condition, nor could this condition be met by relocating or replacing the existing building given the width of the lot (a 100' side yard setback requirement creates a negative building envelope on a 150' wide lot).**
5. No parking shall be permitted in the front yard or within 100 feet of any property line. **Cannot be met as to the side property lines due to the existing width of the lot (see above). Could possibly be met as to the rear property line, but doing so would bring the parking lot closer to both side property lines and/or within 100' of the front property line.**
6. No active recreation area shall be permitted in the front yard or located within 75 feet of a property line. **Met, because no recreational activities are intended for the site, particularly not outside of the building.**
7. All recreation and parking areas shall be screened from view from all property lines by landscaping in accordance with Sections 21-28 and 21-43. **Will be met.**
8. There shall be no outdoor activities after 8:00 p.m. **No outdoor activities are intended for the site, but would be met if they were to occur.**
9. All exterior lighting, except that required for security, shall be turned off between 11:00 p.m. and 6:00 a.m. Monday through Saturday and between 6:00 p.m. and 8:00 a.m. on Sunday. **Preparation for the Sunday service would begin at or shortly after 5:00 a.m. and would require sufficient lighting during certain times of the year for attendees to safely use the parking lot and walkways.**
10. Primary access shall be achieved from a state or county roadway. **Met.**

10. [Description of Requested Variances or Exceptions]

Approval of this application would require a "D-3" use variance for non-compliance with certain conditions for the house of worship conditional use, as discussed above.

With the exception of the said variance, the Applicant believes that no other variance, waiver or exception is required in order to grant the site plan approval requested. However, if the Board

directs that additional variance(s), waiver(s) or exception(s) is/are needed, the Applicant may seek the same in accordance with such direction.

11. [Arguments in Support of Application]

Conditional Use Variance

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

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

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

Coventry Square, 138 N.J. at 298–99. See also TSI E. Brunswick, 215 N.J. at 46.¹

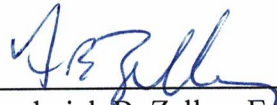
¹ It should be noted that in this case, even if a full “D-1” use variance were required for the Applicant's propose use, the enhanced burden of proof visited upon a commercial use variance applicant under Medici would not be visited upon the Applicant, due to the proposed use being inherently beneficial. The burden of proof is “lessened” for a house of worship, which need only satisfy the balancing test established by the New Jersey Supreme Court in Sica v. Bd. of Adjustment of Twp. of Wall, 127 N.J. 152, 165 (1992). See House of Fire Christian Church v. Zoning Bd. Of Adjustment Of City Of Clifton, 379 N.J. Super. 526, 534 (App. Div. 2005).

In this case, the proofs will show that the site can accommodate the problems theoretically associated with the use, even though the proposal does not comply with the conditions the ordinance established to address those problems. The problems which the conditions were presumably designed by prevent, associated with having a house of worship in a residential neighborhood, would be noise, and at certain times of the year lighting, associated with congregants' vehicles entering and exiting the parking lot and with congregant themselves walking to and from the parking lot, as well as noise associated with audible music and other worship activities. The testimony will show, however, that the use of the proposed facility will be quite limited (only twice weekly, and for relative brief periods of time), and that the prayer services would not be audible from outside of the building.

It should be noted that there are only three (3) homes surrounding the subject property. The home on Lot 37 is approximately 215' from the Applicant's building, approximately 150' from the proposed parking lot, and is already substantially buffered by trees and a garage. The home on Lot 33 is approximately 205' from the Applicant's building, approximately 62' from the proposed parking lot, is already buffered by a stockade privacy fence and can be further buffered by the Applicant with plantings. The home on Lot 34 is approximately 115' from the Applicant's building, approximately 145' from the proposed parking lot, is already buffered by a stockade privacy fence and can be further buffered by the Applicant with plantings. It should be noted that, given the very limited times during which the property would be used by the Applicant, the proposed use would be no more, and possibly less, intense than the permitted single family residential use.

Respectfully Submitted,

BISOGNO, LOEFFLER & ZELLEY, LLC



By: Frederick B. Zelley, Esq.
Attorneys for the Applicant
Lincoln Avenue Gospel Hall

Dated: March 23, 2020