

**BERNARDS TOWNSHIP**  
**ZONING BOARD OF ADJUSTMENT**

**MINUTES v2**  
Regular Meeting  
December 9, 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 October 5, 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, Cambria, Eorio, Genirs, Juwana, Kraus, Seville, Tancredi  
Members Absent: Pochtar  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

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

**APPROVAL OF MINUTES**

November 4, 2020 – Regular Session– On motion by Mr. Tancredi, seconded by Mr. Eorio, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Juwana, Kraus, Seville

**APPROVAL OF RESOLUTIONS**

[Clarke, Seldon T. & Mary Louise](#); Block 304, Lot 2; 35 Old Farm Road; Bulk Variance; ZB20-020 (approved) – Ms. Genirs moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Breslin, Cambria, Eorio, Genirs, Tancredi  
Nay: NONE  
Abstain: Juwana, Kraus, Seville (all for absence)

Motion carried.

[A. Sposato Realty Company Inc. & Sposato Realty LP](#); Block 1608, Lots 10.02 & 11; 31 & 35 East Craig Street; Bulk Variances; ZB20-016 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Genirs seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Tancredi, Seville  
Nay: NONE  
Abstain: Eorio, Juwana (all for absence)

Motion carried.

Mr. Tancredi recused himself and left the room.

**COMPLETENESS HEARING**

Shaw, Adriane; Block 3301, Lot 3; 490 South Maple Avenue; Minor Subdivision, "d" Variance, Bulk Variance; ZB20-021

Mr. Schley advised the Board that the Applicant had submitted all applicable items.

Mr. Kraus moved to deem the application complete. Mr. Cambria seconded.

Roll Call:                   Aye:    Breslin, Cambria, Eorio, Genirs, Juwana, Kraus, Seville  
                                  Nay:    NONE

Motion carried.

Mr. Tancredi returned to the dais.

**COMPLETENESS AND PUBLIC HEARING**

Porcelli, Joseph J.; Block 709, Lot 5; 19 Southard Place; Bulk Variance; ZB20-019

Present:                Joseph J. Porcelli, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Porcelli, Mr. Quinn and Mr. Schley were duly sworn.

Joseph J. Porcelli, Applicant residing at 19 Southard Place, stated that the proposed project, construction of a two-car garage addition on the west side of the existing house and expansion of the driveway, requires relief for minimum rear yard setback. He testified that because of the property is located on the inside corner of Southard Place, it effectively has two (2) front yards and the existing dwelling encroaches into the rear yard setback, adding that the addition would not represent any further encroachment. He also acknowledged that this addition and driveway expansion would bring the lot coverage close to the maximum allowed and stated that he intends to remove an existing shed to help mitigate the issue.

Mr. Porcelli stipulated, as conditions of approval, to all comments made in Mr. Schley's memo dated 11/13/2020, Mr. Quinn's memo dated 12/04/2020 and the Environmental Commission's memo dated 10/27/2020.

Mr. Porcelli testified that in the early fall, his architect had taken the pictures submitted with the application and that they accurately represent the property as it exists. He also stipulated that the exterior of the addition would be substantially similar in color, materials and architecture style to the existing dwelling.

Mr. Tancredi noted that he had seen a commercial vehicle parked in the driveway and advised Mr. Porcelli that that overnight parking of such vehicles in driveways is prohibited by Township ordinance. Mr. Porcelli responded that he intends to park the vehicle inside the garage.

Finally, Mr. Porcelli testified that he had spoken to the neighbors and that they were in favor of the project.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions of the witness. Hearing none, he closed that portion and opened the hearing to the public, either present or via telephone, for comments.

Christopher Riggi, 3 Southard Place, present, was duly sworn and spoke in favor of the application noting that since several other houses nearby that had two-car garages, the proposal would bring the dwelling more into character with the existing neighborhood.

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

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

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

Boyle, Joseph A. & Jennifer H.; Block 1002, Lot 16; 60 Walnut Circle; Bulk Variance; ZB20-022

Present:               Joseph A. Boyle, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Boyle, Mr. Quinn and Mr. Schley were duly sworn.

Joseph A. Boyle, Applicant residing at 60 Walnut Circle, testified that the proposed project, construction of an in-ground pool and surrounding patio, necessitates relief from the ordinance requiring that pools be constructed behind the rear building line of adjacent residential structures on adjoining lots. He noted that the front of the dwelling on adjoining Lot 17 is angled towards his property because that house faces the curve of Walnut Circle, adding that the only conforming location for a pool is located in the southerly rear corner of his property. Mr. Boyle cited safety concerns for not utilizing that location which would be well over 100 feet from the rear entrance to his house because there would be no direct sightline from the house to the pool.

Mr. Boyle referred to photos submitted with the application and testified that there is some vegetative screening between his property and Lot 17. He stipulated that this buffering would be subject to the Township Planner’s approval and supplemented, if necessary, adding that if the pool was in a conforming location, the sightlines to Lot 17 would be more exposed.

Mr. Boyle also acknowledged that installation of the pool and patio would bring the property close to the maximum impervious lot coverage allowed and testified that he had no further plans to increase coverage on the lot.

In reference to the photos submitted with the application, Mr. Boyle testified that he had taken them some time in late summer or early autumn and that they accurately depict the property as it currently exists.

Mr. Boyle stipulated, as conditions of approval, to all comments made in memos from Mr. Schley (11/13/2020), Mr. Quinn (12/01/2020) and the Environmental Commission (10/24/2020). He testified that there would be some accent lighting and that the pool mechanicals are proposed to be located near the existing air conditioning unit.

Chairman Breslin opened the hearing to the public for questions or comments. Hearing none from either those who were present or via telephone, he closed that portion of the hearing.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for both "c(1)" or "hardship" and "c(2)" or "benefits vs. detriments" variance relief. 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 application for variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Genirs seconded.

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

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

Raymond, Michael/Staub, Stacey A.; Block 1104, Lot 17; 22 Monroe Place, Bulk Variances; ZB20-023

Present:               Michael Raymond, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Raymond, Mr. Quinn and Mr. Schley were duly sworn.

Michael Raymond, Applicant residing at 66 Ramapo Drive, Basking Ridge, NJ, stated that the subject property is located at 22 Monroe Place and that the proposed project, removal of an existing dwelling and construction of a new dwelling with an attached three-car garage, requires relief for minimum lot area and minimum lot widths for a corner lot. He added that although the proposed house would be conforming, the property itself is not.

Mr. Raymond stipulated, as conditions of approval, to all the comments made in Mr. Schley's memo dated 11/13/2020 and Mr. Quinn's memo dated 12/03/2020. In response to a comment made in the Environmental Commission's memo dated 10/24/2020, he acknowledged that the project would bring the property close to the maximum allowable impervious lot coverage and offered to reduce the size of the proposed driveway by eliminating a proposed "bump out" area close to the garage. A discussion ensued and it was decided to leave that decision up to the Applicant.

Mr. Raymond testified that he had taken the pictures submitted with the application approximately 1.5 months ago and that they accurately depict the property as it currently exists.

Mr. Raymond stated that some consideration had been given to updating the existing house however due to the poor condition of the structure, it was not feasible. He noted that the architectural style and size of the proposed dwelling would complement the neighborhood and upgrade the housing stock and that the neighbors are in favor of the project since the existing dwelling had been abandoned for years. Finally, he testified that he would donate as much of the existing house as possible and that the remaining structure would be made available to the Basking Ridge Fire Company should they wish to run drills on the site.

Chairman Breslin opened the hearing to the public for questions or comments. Hearing none from either those who were present or via telephone, he closed that portion of the hearing.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for both "c(1)" or "hardship" and "c(2)" or "benefits vs. detriments" variance relief. 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 application for variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Kraus seconded.

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

Motion carried.

Mr. Eorio recused himself and left the meeting.

#### **COMPLETENESS AND PUBLIC HEARING**

Cohen, David/Patel-Cohen, Mital; Block 202, Lot 16; 154 Old Farm Road; Bulk Variance; ZB20-018

Present:                   David Cohen & Mital Patel-Cohen, Applicants  
                                  Jonathan E. Booth, Architect for the Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Both Applicants, Mr. Booth, Mr. Quinn and Mr. Schley were duly sworn.

After Chairman Breslin confirmed that no members of the public were represented by counsel, David Cohen, Applicant residing at 154 Old Farm Road, gave a description of the proposed project which includes construction of a two-story addition to the rear of the dwelling (replacing an existing deck). He testified that the existing house is located entirely within the minimum front yard setback and that there is no conforming location for the addition. Even though it would not be visible from the street, the addition required relief from the front yard setback requirements. Mr. Warner noted that this property was the subject of a front yard setback variance application for an addition years ago because of the same issue. Mr. Cohen stated that he had heard no negative comments from his neighbors about this portion of the application.

Mr. Cohen stated that Mr. Booth had taken the photos submitted with the application approximately two (2) months prior to the hearing and that they accurately reflect the property as it currently exists.

Mr. Cohen testified that the project also included installation of an in-ground pool with decking and that the proposed location of the pool does not comply with the ordinance requiring that pools shall be located behind the rear building line of existing residential structures on adjoining lots. He gave a brief description of the back yard, noting that not only is it encumbered by steep slopes which are regulated by ordinance, but also by the location of the septic system. He stated that the proposed decking includes an upper tier that would be attached to the addition and a lower tier which would surround the pool adding that this location, although nonconforming, provided direct sightlines from the house and deck to the pool which is an important safety concern since he has children.

Mr. Schley stated that the steep slope plans submitted with the application show the four (4) slope categories including the three (3) that are regulated by ordinance and added that the proposed disturbance is under the maximum allowed. Any relocation of the pool down the hill would disturb more and more of the slope. Mr. Warner observed that there is an area farther back in the subject lot that is flatter and represents a conforming location for the pool but Mr. Quinn pointed out that that location is not only far from the house but also 40 to 50 feet lower than the house elevation and that there are existing mature trees in that area.

Chairman Breslin asked why the house was not aligned with the other houses. Mr. Schley opined that it is possibly due to the steep slopes and that this section of the Township has a lot of anomalies possibly due to the topography.

The following exhibits were entered into evidence:

- Exhibit A-1 – a colorized version of Sheet 2 of plans prepared by Mr. Booth, dated 10/02/2020 and submitted with the application
- Exhibit A-2 – a colorized version of Sheet 3 of plans prepared by Mr. Booth, dated 10/02/2020 and submitted with the application
- Exhibit A-3 – a colorized version of Sheet 5 of plans prepared by Mr. Booth, dated 10/02/2020 and submitted with the application
- Exhibit A-4 – Elevation drawing of the house, decks and pool, prepared by Mr. Booth
- Exhibit A-5 – Map showing the topography of the existing dwelling prepared by Mr. Booth
- Exhibit A-6 – a colorized version of Sheet 6 of plans prepared by Mr. Booth dated 10/02/2020 and submitted with the application
- Exhibit O-1 – a compendium of (3) color photos taken by Eleanor K. Molloy several days prior to the hearing

Jonathan E. Booth, architect with offices in Basking Ridge, NJ, was accepted by the Board as an expert in the field of residential architecture. Using **Exhibits A-1** and **A-2**, Mr. Booth testified that the existing dwelling is located entirely within the front yard setback and that the proposed addition, located on the rear of the house would only be visible from the south side of the property, not from the street or from the north side.

Mr. Booth used **Exhibits A-3** and **A-4** to illustrate the existing conditions in the back yard, noting that the design for the project was created to create as little disruption as possible. The two-tiered deck is intended to provide access to the pool and to “open up” the back yard since so much of it is encumbered by the slopes, wooded areas, septic tank and septic field. Finally, he testified that because the pool would be integrated within the existing slopes, there would be no materials either brought in or taken out during the grading process.

Recognizing that the pool is not located to the rear of the adjacent dwelling to the north (Lot 17 – 164 Old Farm Road) and that the pool would be visible from that house and its deck, Mr. Booth stated that the Applicants are proposing additional vegetative buffering, shown in **Exhibit A-4**. Using **Exhibit A-3**, he showed the outline of the structures on Lot 17 and stated that the pool would be located well from the house on Lot 17.

Mr. Booth used **Exhibit A-5** to show the topography of the subject property and Lot 17 to the north, noting that the first floors of both dwellings are at approximately the same elevation. With **Exhibit 6**, Mr. Booth discussed the location of the subject house and proposed pool in relation to the dwelling on Lot 17 and how the proposed buffered area would intervene in the sightlines, noting that that area would be seen from the deck on Lot 17. He testified that even though there is currently an approximately 50' high tree canopy which does not provide a visual

buffer, there is space to create an evergreen buffer approximately 10' to 12' high. The Applicants stipulated, as a condition of approval, that the landscape buffering would be subject to the approval of the Township Planner.

The Applicants stipulated, as conditions of approval, to the comments made in memos from Mr. Schley (11/13/2020), Mr. Quinn (12/02/2020) and the Environmental Commission (10/24/2020).

Mr. Booth stated that no buffering is proposed for the property to the south (Lot 15 – 140 Old Farm Road) even though the pool will not be located behind the rear building line of the dwelling on that property.

Finally, Mr. Booth testified that a detailed lighting plan will be developed showing that there will be no light spillage onto adjacent properties. The location of the pool mechanicals will be identified after consultation with the pool contractor.

Chairman Breslin opened the hearing to the public for questions of the witness. Hearing none from either those present or via telephone, that portion was closed. He then opened the hearing for comments from the public.

Eleanor K. Molloy, 164 Old Farm Road (Lot 17), present, was duly sworn by Mr. Warner. She distributed to the Board copies of **Exhibit O-1** showing the view of the proposed pool location from her house and asked that the variance for the pool placement be denied because there are other conforming locations on the property that would not impact her property visually. In response to a question from Chairman Breslin, she stated that she had no objection to the addition. She could not comment on whether sufficient landscaping could alleviate her concerns since there were no actual plans available, but she opined that a landscape architect would be able to create a successful design.

Mr. Warner advised that since Mrs. Molloy had presented testimony, the Applicants should have an opportunity to cross-examine her. Mrs. Patel-Cohen stated that if the pool were to be placed in a conforming location, it would be in direct view of Mrs. Molloy's deck. Using **Exhibit A-3**, Mr. Booth showed that location, opining that that it would have an even larger visual impact on the Molloy's property. He further opined that the ordinance prohibiting pools in front of the rear building line of adjacent dwellings was created to prevent the location of pools in the side yards of houses. He stated that in this case, there is an objection that the pool would be visible from the deck on the rear of an adjacent house which he opined was not the intent of the ordinance. Mrs. Molloy stated that the side of her house (kitchen, patio) and yard would face the pool.

Chairman Breslin opened the hearing to the public for questions of the Applicant, Mr. Booth and Mrs. Molloy. Hearing none from either those that were present or via telephone, he closed that portion of the hearing. He then opened the meeting to the public for comments.

Marvin B. Aaron, 151 Old Farm Road, present, was duly sworn by Mr. Warner. He testified that his property is located directly across from the subject property and that he supported the application because it would increase property values. He felt that because of the topography of the neighborhood, several of the pools in the neighborhood seemed to be located either in front yards or side yards.

Christopher Molloy, 164 Old Farm Road, present, was duly sworn by Mr. Warner and disagreed with Mr. Aaron's comment about the pool locations. In response to a question from Chairman Breslin, Mr. Molloy stated that even if the pool was moved to a conforming location well to the rear of the property, he would still request additional buffering. He reiterated his position that he wanted the pool to be located further back on the subject property and that he also wanted additional landscaping.

Jennifer S. Aaron, 151 Old Farm Road, present, was duly sworn by Mr. Warner, spoke in support of the application.

Maura Smith, 140 Old Farm Road (Lot 15 immediately adjacent to the south of the subject property), present, was duly sworn by Mr. Warner and stated that even though the pool was not located to the rear of the rear building line of her home, she supported the application regardless of the pool location. She added that she did not feel any additional landscaping between the two properties was necessary.

Hearing no further comments from either those that were present or via telephone, Chairman Breslin closed that portion of the hearing.

Mr. Cohen provided a brief summation of the application noting that the addition would provide more indoor space for his family and that the location of the pool was chosen based on safety concerns for his children and to minimize the impact on the steep slopes.

After deliberating, the majority of the Board concluded that the Applicants had satisfied the positive and negative criteria required for both "c(1)" or "hardship" and "c(2)" or "benefits vs. detriments" variance relief for the pool location and the addition. 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 application for variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Kraus seconded.

Roll call:                   Aye:                   Breslin, Cambria, Eorio, Kraus, Pochtar, Tancredi  
                                  Nay:                   Genirs

Motion carried.

**COMMENTS FROM MEMBERS OR STAFF**

**ADJOURN**

On motion by Mr. Kraus, seconded by Mr. Tancredi, all eligible in favor and carried, the meeting was adjourned at 10:33 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**MARY LOU AND SELDON T. CLARKE  
Case No. ZB20-020**

**RESOLUTION**

WHEREAS, **MARY LOU AND SELDON T. CLARKE** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance in connection with the construction of a two-story addition to the southeast side of the existing dwelling, the replacement/relocation of an existing sidewalk, and the expansion/relocation of the existing driveway, on property identified as Block 304, Lot 2 on the Tax Map, more commonly known as 35 Old Farm Road (the “Property”):

A variance for a front-yard setback from Sandstream Lane (secondary front yard) of 79 feet<sup>1</sup>, whereas the existing front-yard setback from Sandstream Lane is approximately 87.3 feet, and the minimum required front-yard setback in an R-1 (3 acre) residential zone is 100 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 November 4, 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 a 3.03 acre corner lot with frontage on Old Farm Road (primary front yard) and Sandstream Lane (paper street and secondary front yard). Sandstream Lane is

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<sup>1</sup> The Township Stream Buffer Conservation Ordinance provides that, when a yard adjoins a stream, setbacks are measured from the centerline of zone two of the stream buffer conservation area. The proposed addition provides a conforming 100 foot setback from the Sandstream Lane right-of-way, however, a variance is required because the proposed setback as measured to the centerline of zone two of the stream buffer is 79 feet.

presently wooded and likely to remain unimproved due to environmental constraints. An unnamed tributary to the Passaic River flows along Sandstream Lane and, because this watercourse is classified by the New Jersey Department of Environmental Protection (“NJDEP”) as a Category One (i.e., high quality) water, the stream buffer conservation area required by the Township Ordinance is 300 feet wide, with the first 25 feet of the buffer along the stream bank being zone one and the balance of the buffer, which consumes the majority of the Property, is zone two.

3. In 2014, the Applicants obtained a zone two waiver, granted by the Township Engineer pursuant to Section 21-14.4.b.3.d of the Ordinance to permit a small addition to the rear of the dwelling. The waiver eliminated the portion of zone two that encompassed the dwelling and most of the existing improvements and provided for a conforming 100 foot setback for the now-existing addition. In accordance with the terms of the waiver, the Applicants implemented a stream buffer management plan and granted to the Township a stream buffer conservation easement.

4. The Property is presently improved with a two-story frame dwelling, detached frame garage, wood deck, pool with concrete surround, shed, and associated improvements.

5. The Applicants propose to construct a two-story addition to the southeast side of the existing dwelling. The first floor is to be expanded by approximately 375 square feet, including a new informal front entry, a new covered area at an existing side/mudroom entry, and an expanded office. The second floor expansion, most of which is above the existing first floor, includes a bedroom, bathroom, and hall/closet space. An existing side walkway is to be replaced and relocated and the existing driveway is to be expanded by 202 square feet to maintain alignment with the relocated two-car garage, which is being shifted approximately 8 feet to the southeast to accommodate the new informal entry.

6. The Applicants' proposal is depicted on a Zoning and Stream Buffer Plan prepared by Candice J. Davis, P.E., dated September 16, 2020, last revised September 22, 2020, same consisting of two (2) sheets; Architectural Plans prepared by Daniel A. Encin, R.A., dated April 28, 2020, last revised October 7, 2020, same consisting of five (5) sheets; a Survey prepared by Ernest W. Hausmann, P.L.S., P.P., dated January 23, 1995, unrevised, same consisting of one (1) sheet and a Parcel Map of Stream Buffer Conservation Easement prepared by Ryan L. Smith, P.L.S., P.E., dated June 20, 2014, last revised July 25, 2014, same consisting of one (1) sheet. The Applicants also submitted a Wetlands/Transition Area Investigation prepared by Environmental Technology Inc., dated September 30, 2020, as well as a compendium of photographs of the Property.

7. The Property is located in the R-1 (3 acre) residential zone. The requested variance for the front-yard setback deviation is governed by the criteria of N.J.S.A. 40:55D-70(c).

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

9. Mary Lou and Seldon Clarke, the Applicants, having an address of 35 Old Farm Road, were duly sworn according to law. Mr. Clarke testified that the Applicants have resided at the Property for eight (8) years. He explained that the existing dwelling is in dire need of a new garage and mudroom. Mr. Clarke further explained that the Applicants propose to expand the existing screen porch to create a home office for himself, as his wife is already using an office in the basement.

10. Candice Davis, P.E., having a business address of 460 Main Street, P.O. Box 459, Chester, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of civil engineering. Ms. Davis testified that the

Applicants are proposing to construct a two story addition off of the existing single-family dwelling. She explained that the Property is located in the R-1 residential zone and is encumbered by a stream along the southeasterly property line which results in a 300 foot wide portion of the property being located in a riparian zone. Ms. Davis testified that the yard area adjoining the proposed addition is located within the zone two buffer, rather than the 25 foot wide zone one buffer. She further testified that the environmentally constrained areas are already contained in an easement. Ms. Davis explained that the distance between the property line and the addition is greater than 100 feet, but that where a yard abuts a stream, the setback is measured from the centerline of zone two of the stream buffer conservation area, rather than the property line.

11. Mr. Clarke introduced into evidence, as Exhibit A-1, and, as Exhibit A-2, two photographs of various views of the Property. Mr. Clarke testified that the photographs introduced into evidence and submitted with the application materials were taken approximately six (6) to eight (8) weeks prior and confirmed that said photographs constitute an accurate depiction of the Property as it presently exists. The Applicants stipulated, as a condition of approval, that the exterior of the proposed addition shall be substantially similar in color, material, and architectural components to the balance of the exterior of the dwelling.

12. No member of the public commented on, or objected to, the application.

### **DECISION**

13. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the front-yard setback deviation under both N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

14. First, under the positive criteria for a “(c)(1)” or “hardship” variance, the Board finds that the Applicants have satisfied their burden of demonstrating 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. The Board recognizes that the setback deviations are, at least in part, a product of the Property being a corner lot with frontage on both Old Farm Road and Sandstream Lane, as well as the location of the unnamed tributary to the Passaic River that flows along Sandstream Lane. The Board further recognizes that the unnamed tributary is classified by the NJDEP as a Category One (i.e., high quality) water, and, therefore, a 300 foot wide stream buffer conservation area is required by the Township Ordinance. The Board notes that while the first 25 feet of the buffer along the stream bank are zone one, the balance of the buffer, which consumes the majority of the Property, is zone two. The Board recognizes that if the secondary front-yard setback to the “paper street” Sandstream Lane was actually a side-yard setback (as it appears to be), then the minimum required setback would be 50 feet and the proposed 79 foot setback would comply. Moreover, the Board correspondingly recognizes that if the stream buffer conservation area was not present, the dwelling would be set back even greater than the 100 feet required “secondary” front-yard setback. Finally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulation 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 variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

15. Second, the Board finds the Applicants have also satisfied the positive criteria for a “c(2)” or “flexible c” variance. Specifically, 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. Here, the Board finds that the Applicants have demonstrated that the proposed development will advance the purposes set forth in Section 2 of the MLUL, specifically, subsections (a), (c), (i) and (j) in that the proposal will promote the general welfare, provide adequate light, air and open space, promote a desirable visual environment and promote the conservation of valuable resources in the State and prevent urban sprawl and degradation of the environment through improper use of land. Accordingly, the Board finds that the deviations are relatively modest and the detriments will be minimized by the stipulated conditions, such as continuation of the stream buffer management plan, the installation of a silt fence, and compliance with the Township Flood Damage Prevention Ordinance, such that the benefits of the Applicants' proposal substantially outweigh the relatively modest detriments associated therewith. As such, the Board finds that the Applicants have demonstrated the positive criteria for variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

16. Third, and finally, the Board finds that the Applicants have satisfied the negative criteria; that is, they 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' proposal will not render the Property out of character with the existing neighborhood. In this regard, the Board recognizes that the addition will appear to be set back more than 100 feet, notwithstanding that the calculated setback is only 79 feet. The Board further recognizes that the setback from Sandstream Lane would be compliant if same were considered to be a side-yard, rather than a secondary front-yard. Finally, the Board notes that no member of the public objected to the Applicants' proposal. As to the substantial impairment prong of the negative

criteria, the Board finds that granting the requested relief certainly will not result in a rezoning of the Property and, therefore, will not impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, the Board took action on this application at its meeting on November 4, 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 9th day of December, 2020, that the application of MARY LOU AND SELDON T. CLARKE, 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 exterior of the proposed addition shall be substantially similar in color, material, and architectural components to the balance of the exterior of the dwelling;
3. The Applicants shall continue to comply with the previously approved stream buffer management plan;
4. The Applicants shall install a silt fence prior to any land disturbance in order to minimize any water quality impacts during construction and same shall be subject to the review and approval of the Township Engineering Department;
5. The Applicants shall extend the silt fence approximately 35 feet to shadow the entire driveway apron and help ensure that the area to the east of the existing apron is not used as a staging area for materials or equipment;
6. The Applicants shall submit a National Flood Insurance Program Elevation Certificate, completed to document compliance with the Township Flood Damage Prevention Ordinance, to the Township Engineering Department, if requested, prior to the issuance of a building permit;
7. 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;

8. 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; and
9. 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, Cambria, Eorio, Genirs, 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 December 9, 2020.



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

Dated: December 9, 2020

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**A. SPOSATO REALTY CO., INC.  
SPOSATO REALTY LP  
Case No. ZB20-016**

**RESOLUTION**

WHEREAS, A. SPOSATO REALTY CO., INC. and SPOSATO REALTY LP (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 construction of a dwelling on each of two adjoining lots consistent with a subdivision approval granted by the Planning Board in 2008<sup>1</sup>, and the modification of the existing driveway on Lot 11 to provide access to the new dwellings, on property identified as Block 1608, Lots 10.02 and 11 on the official Tax Map, more commonly known as 31 and 35 East Craig Street, respectively (collectively, the “Property”):

**As to Lot 10.02 (31 East Craig Street):**

- (1) A variance for the existing and proposed lot frontage of 30 feet, whereas the minimum required lot frontage in an R-6 (3/4 acre) residential zone is 75 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and
- (2) A variance for the existing and proposed lot width of 30 feet, whereas the minimum required lot width in an R-6 (3/4 acre) residential zone is 150 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

**As to Lot 11 (35 East Craig Street):**

- (3) A variance for the existing and proposed lot width of 75 feet, whereas the minimum required lot width in an R-6 (3/4 acre) residential zone is 150 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

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<sup>1</sup> The Planning Board approved the lot frontage, lot width, and driveway setback deviations in 2008, however, the variance relief for the lot frontage and lot width deviations lapsed. The Planning Board also approved a side-yard setback deviation of 10.78 feet for the existing dwelling on Lot 11, but the Applicants propose a conforming 30 foot side-yard setback for the new dwelling on Lot 11.

WHEREAS, a public hearing on notice was held on October 7, 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 Property, i.e. Lots 10.02 and 11, was the subject of a three-lot minor subdivision approved by the Planning Board and memorialized in a resolution dated December 2, 2008 (the "2008 Approval"). The 2008 Approval, granted to Ridge Custom Homes, LLC (Application PB#07-003), also created Lot 10.01 (25 East Craig Street), which is a conforming 0.9 acre lot containing a dwelling located between Lot 10.02 and East Craig Street. Lots 10.02 and 11 resemble flag lots in that each lot has a wide "flag" portion for a dwelling and a narrow "staff" portion for a driveway, although, by definition, neither of the lots constitutes a "flag lot" under Bernards Township's zoning ordinance. The 2008 Approval included variances granted for the existing/proposed lot frontage and lot widths requested herein and also included exceptions granted for no setback for the proposed shared driveway.

2. Pursuant to Section 21-5.10 of the Land Development Ordinance, variance relief granted in conjunction with a subdivision approval expires at the same time as the subdivision approval, i.e. upon expiration of the subdivision's period of protection from zoning changes, unless construction has commenced on the structure permitted by the variance. Pursuant to N.J.S.A. 40:55D-47(e), a minor subdivision approval is normally afforded a two-year protection period. However, pursuant to the Permit Extension Act of 2008, N.J.S.A. 40:55D-136.1, the subject subdivision approval was extended to June 30, 2016. Since construction of the two new dwellings

did not commence prior to June 30, 2016, the lot frontage and lot width variance approvals have expired and the Applicants must seek new variance approvals for same. The variance relief granted for the pre-existing side-yard setback on Lot 11, as well as the exceptions granted for the proposed driveway setback on both lots, have not expired and remain valid.

3. The Applicants' proposal is depicted on Engineering plans prepared by Craig W. Stires, P.E., dated August 13, 2020, unrevised, same consisting of three (3) sheets; undated/unsigned floor plans and elevations for 31 and 35 East Craig Street; and a compendium of nine (9) photographs of the Property. The Applicants also submitted a Jurisdictional Wetlands Evaluation prepared by Edward A. Kuc, Principal Ecologist at Eastern States Environmental Associates, Inc., dated September 10, 2020 and a copy of the 2008 Approval (PB#07-003) dated December 2, 2008.

4. The requested variances for the minimum lot frontage and lot width deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

5. David Schley, A.I.C.P./P.P., the Board Planner was duly sworn according to law.

6. Frederick B. Zelle, Esq., of Bisogno, Loeffler & Zelle, LLC, entered his appearance on behalf of the Applicants.

7. Cynthia Andrews, the Executor of the Estate of Armand Sposato, was duly sworn according to law. Ms. Andrews testified that Mr. Sposato is her father and that she is the Executor of his Estate. She explained that the Applicants obtained subdivision approval to create three lots and confirmed that the subdivision had already been perfected. Ms. Andrews testified that the Estate decided to sell the subdivided lots to a builder who is interested in developing all three lots that were the subject of the 2008 Approval. She explained that the requested variance relief is

necessary before title to the subject two lots can be transferred to the builder, who has already taken title to the third lot.

8. On questioning as to whether there are existing dwellings on the lots, Ms. Andrews testified that two of the lots have existing dwellings (Lots 10.01 and 11) and one of the lots is vacant (Lot 10.02). On questioning as to whether the Planning Board imposed any conditions requiring approval from the Historical Society of the Somerset Hills, Mr. Schley explained that Condition 14 of the 2008 Approval provides:

*In connection with development or redevelopment on any one of the lots, the developer of a home shall meet with the Historical Society of the Somerset Hills to discuss the home design to assure conformity of that design with the neighborhood. It shall not be required that the Historical Society grant approval to the design; rather, the purpose of this condition is to allow for some discussion, in a nonbinding fashion, so as to cooperatively attempt to maintain the character of the neighborhood.*

9. On questioning as to the photographs submitted with the application materials, Mr. Zelley represented that he had taken the photographs when the application was filed and confirmed that said photographs constitute an accurate depiction of the Property as it presently exists. On questioning as to the nature of the relief requested, Mr. Zelley advised that the variances relate to the size and shape of the Property, rather than to any structures located thereon.

10. Robert V. Kiser, P.E., of Stires Associates, having a business address of 43 West High Street, Somerville, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Mr. Kiser introduced into evidence, as Exhibit A-1, a colorized version of the engineering plans submitted with this application combined with the landscape plan (Sheet 8 of 11) approved in 2008.

11. Referencing Exhibit A-1, Mr. Kiser described the existing conditions. He testified that all of the lots exceed the minimum lot size requirements and that Lots 10.01 and 11 are

currently improved with existing dwellings. Mr. Kiser explained that the Applicants are seeking variance relief for lot width as to Lots 10.02 and 11, and lot frontage as to Lot 10.02. He further explained that the nonconforming driveway setback for the proposed shared driveway was approved by the Planning Board as part of the 2008 Approval. Mr. Kiser testified that the lot frontage measurements are taken at the right-of-way and the lot width measurements are taken 50 feet from the right-of-way because, although the lots appear to be flag lots, they technically are not flag lots under Bernards Township's zoning ordinance. Mr. Schley explained that lots are only considered flag lots under the ordinance if they are developed in accordance with flag lot standards and noted that flag lots are not permitted in the R-6 Zone. He further explained that the lots have the physical attributes of a flag lot, but are considered standard lots.

12. Mr. Kiser testified that the Property is encumbered by wetlands and wetland buffer areas, but that the said areas are protected by inclusion in a deed restriction. He explained that the protected areas consist of a roughly 150 foot wide strip of land located near the rear of the Property which is within a conservation easement dedicated to the Township. Mr. Kiser testified that the Property is encumbered by State open waters, a stream buffer area and steep slopes, and that same are also contained within the conservation easement dedicated to the Township. Mr. Kiser testified that there are no other critical areas located on the Property. On questioning as to whether the easement contains all of the protected features on the Property, he further testified that it did so and he explained that the easement itself is broader than the protected areas.

13. On questioning as to whether the Applicants have made any changes to the proposal since the 2008 Approval, Mr. Kiser confirmed that the plans have not changed and that the Planning Board reviewed the same proposed concept dwellings and stormwater management measures. On questioning, Mr. Kiser testified that the Applicants are not developing the Property

and that same will be done by a developer. On questioning as to whether the Planning Board considered whether a shared driveway would be appropriate, Mr. Kiser advised that the Planning Board approved the driveway and found that the proposed design constituted a better planning alternative than a separate driveway for each of the lots.

14. On questioning as to tree removal and replacement, Mr. Kiser testified that the tree removal and replacement plan includes the trees proposed to be removed, as well as the replacement trees previously approved as part of the 2008 Approval. He explained that the Applicants are installing an additional 123 trees. On questioning, Mr. Kiser confirmed that the tree removal and replacement requirements had not changed since the Planning Board granted the 2008 Approval. He further confirmed that the Applicants are not seeking any deviations from either the prior, or current, tree removal and replacement requirements.

15. On discussion of the September 29, 2020 Review Memorandum prepared by the Board Planner, Mr. Schley, Mr. Kiser testified that the Applicants were unable to obtain additional land to eliminate, or even minimize, the proposed deviations without rendering adjacent properties nonconforming. He explained that, even if additional land could be obtained, it would not make a measurable difference. On questioning as to whether the Applicants were relying on the same arguments submitted to the Planning Board in 2008, Mr. Kiser confirmed that the Applicants are still seeking variance relief pursuant to N.J.S.A. 40:55D-70(c)(2). As to the balance of the comments and requirements set forth in Mr. Schley's Review Memorandum, the Applicants stipulated to complying with same.

16. On discussion of the October 5, 2020 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth therein. As to Comment 2 regarding the Wetlands Letter of

Interpretation (“LOI”), Mr. Kiser confirmed that same had expired, but that Edward A. Kuc had conducted a re-evaluation of the Property and concluded that the wetlands limits remain consistent with the formerly verified limits.

17. As to the September 29, 2020 Review Letter prepared by the Environmental Commission, the Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth therein. On discussion of the requested plan revisions, Mr. Kiser advised that the additional information was already on the plans that had been submitted in 2008, but that the Applicants would revise the current plans to include said information. Mr. Schley advised that, if the Applicants are using the same plans as were presented as part of the 2008 application, they were not required to create a duplicate set of plans, as same are already on file with the Township Engineering Department.

18. Melissa Thompson, having an address of 19 E. Craig Street, questioned where the wetlands are located. She further questioned whether the new builder would have to comply with the conditions set forth in the 2008 Approval, and she was advised that the builder would have to do so.

19. Christina Bramel, having an address of 49 N. Finley Avenue, questioned whether the landscaping plan that had been approved in 2008 had been revisited given that 12 years had passed. She further questioned whether the Applicants would have to provide additional trees if some of the trees that were proposed to remain had died in the interim 12 years. Mr. Kiser testified that the Applicants had not revisited the landscaping plan, but are committed to complying with the tree removal and replacement requirements. Mr. Schley advised that the landscaping would ultimately be subject to the review and approval of a Landscape Committee and, if the Landscape

Committee determined that there was a gap in the landscape screening, the Applicants would be required to plant additional trees.

20. Allison Fahey, having an address of 26 E. Craig Street, inquired as to who would be responsible for maintaining the sidewalk along the frontage of the Property, and Mr. Schley advised that the property owners are responsible for maintaining the land that they own. He further advised that there is an easement in place that provides for maintenance of the shared driveway by the owners of Lots 10.02 and 11.

21. Nora Beitz, having an address of 39 E. Craig Street, questioned whether the proposed landscape screening would be sufficient, particularly if trees that were intended to remain had died. Mr. Kiser advised that, while the landscaping had not been reevaluated, there appears to be extensive vegetation which has likely grown since the 2008 Approval.

22. Several members of the public made comments, and expressed concerns, about the application.

23. Ms. Bramel, 49 N. Finley Avenue, was duly sworn according to law and expressed concern that the previously approved landscaping plan may no longer be accurate. She requested that the Board ensure that the existing and proposed landscaping is sufficient.

24. Ms. Beitz, 39 E. Craig Street, was duly sworn according to law and expressed concern about the wooded area and mature trees behind her dwelling being disturbed and such disturbance having a detrimental impact on her privacy. She expressed further concern about the condition of the sidewalk, as well as the location of the proposed driveway, because she believes there is limited visibility of pedestrians from the right-of-way, and the shared driveway will only exacerbate the existing unsafe conditions. Mr. Schley advised that the Applicants cannot disturb landscaping within the required buffer areas, and he confirmed that the overall landscaping would

be subject to the review and approval of the Landscape Committee. On questioning as to the condition of the sidewalk, Ms. Beitz explained that it is at a lower elevation than other portions of the right-of-way, making the sidewalk situation potentially hazardous. On discussion, the Board considered imposing a condition requiring the Applicants to pave and/or adjust the grading of the proposed shared driveway.

25. Ms. Thompson, 19 E. Craig Street, was duly sworn according to law and expressed concern about the sufficiency of the existing and proposed landscaping. She requested that the Township re-evaluate the landscaping plan to ensure that same would provide her with the level of privacy she currently has on her property. Ms. Thompson questioned how she would know which trees were intended to be removed, and Mr. Schley advised that the landscaping plan provides the location of all of the trees proposed to be removed (marked with an x), as well as those proposed to be installed. Mr. Schley confirmed that all of the trees shown on the plan as being planted would have to be planted.

26. Todd Edelstein, having an address of 172 Riverside Drive, was duly sworn according to law. Mr. Edelstein requested that the Landscape Committee advise the adjacent neighbors when it would be inspecting the landscaping. Mr. Schley confirmed that the landscaping plan is on file in his office and members of the public are welcome to review it.

#### **DECISION**

27. 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 lot frontage and lot width deviations pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2). As to the positive criteria for “(c)(1)” or “undue hardship” variance relief, the Board finds that the Applicants have demonstrated that the strict application of the zoning regulations will

result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the Applicants as the owners of the Property. Here, the Property is an irregularly shaped lot constrained by steep slopes, stream buffers, wetlands, and wetland buffer areas, such that it is exceptionally difficult for the Applicants to conform with the lot width and lot frontage requirements. Moreover, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created by these Applicants or any predecessor-in-title. Finally, the Board recognizes that there is no adjacent land available for the Applicants to acquire to bring the Property into, or closer to, conformity with respect to these deviations. As such, the Board finds that the Applicants have satisfied the positive criteria for variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

28. As to the positive criteria for “(c)(2)” or “flexible c” variance relief, the Board finds that the Applicants have demonstrated that the proposed development will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law, because the proposal promotes the general welfare, promotes the establishment of appropriate population densities, and promotes the conservation of natural resources and prevention of degradation of the environment through proper use of land. Specifically, the Board recognizes that the Applicants have already dedicated the portion of the Property encumbered by steep slopes, stream buffers, wetlands, and wetland buffer areas to the Township to protect against future disturbance of same. The Board concurs with the findings of the Planning Board as set forth in the 2008 Approval regarding the proposed lot configuration, specifically that a shared driveway constitutes a better planning alternative than constructing a new road or an additional curb cut, because “the municipality does not have to maintain a new roadway, there would be no new curb cuts on East Craig Street, grading and tree removal would be less using the existing driveway for two homes, and the streetscape would not

be altered.” The Board recognizes that the Planning Board previously granted a side-yard setback deviation for Lot 11, but that the Applicants propose to eliminate the previously approved nonconforming condition. The Board finds that the elimination of a previously approved nonconforming condition constitutes a public benefit. Additionally, the Board finds that the conditions stipulated to by the Applicants, as set forth below, will mitigate the relatively modest detriments resulting from the proposed development, further supporting a finding that the benefits to be derived from the development proposal substantially outweigh the detriments associated therewith. As such, the Board finds that the Applicants have satisfied the positive criteria for variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

29. As to the negative criteria for the requested (c)(1) and (c)(2) bulk variance relief, 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, the Board finds that the proposal will not result in substantial detriment to the public good, because the proposed development is consistent with the existing neighborhood. The Board recognizes that members of the public expressed concerns as to the existing and proposed landscaping, but finds that the stipulated to condition that same will be subject to the review and approval of the Landscape Committee sufficiently mitigates the modest detriment associated with the Applicants’ proposal. As to the substantial impairment prong, the Board finds that granting the requested relief will not rise to the level of a rezoning of the Property. In this regard, the Board recognizes that residential dwellings are a permitted use in the R-6 Zone and that the Applicants previously received approval for the creation of the lots, as well as the requested relief, as part of the Planning Board’s 2008 Approval.

WHEREAS, the Board took action on this application at its meeting on October 7, 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 9th day of December, 2020, that the application of A. SPOSATO REALTY CO., INC. AND SPOSATO REALTY LP, 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 permit the Board's Landscape Committee to conduct an evaluation of the landscaping, once all of the landscaping is installed, and prior to the issuance of a certificate of occupancy, and the Applicants shall comply with the Landscape Committee's reasonable recommendations for additional plantings, if necessary, to ensure that a sufficient landscape buffer is provided between the Property and the adjacent lots. In the event that the Applicants disagree with the determinations of the Landscape Committee as to the adequacy of the installed landscaping, the Applicants' only recourse shall be to promptly appeal the Landscape Committee's determination to the Board for a final determination, all in accordance with the Board's Rules and Regulations;
- (3) The Board shall retain jurisdiction over all matters relating to the sufficiency of the existing and proposed landscape screening;
- (4) The Applicants shall provide informal notice, in writing, to the adjacent property owners of the date and time, once scheduled, of the Landscape Committee's anticipated visit to the Property;
- (5) The Applicants shall, subsequent to the issuance of building permits but prior to the issuance of any permanent certificates of occupancy, trim the existing vegetation along East Craig Street to the extent deemed appropriate by the Township Engineering Department to improve sight distances at the shared driveway;
- (6) The Applicants shall, subsequent to the issuance of building permits but prior to the issuance of any permanent certificates of occupancy, pave the portion of the shared driveway located within the street right-of-way and within approximately 10 feet of the right-of-way, and the grading in this area shall be designed so as not to hinder, and to the extent practicable to improve, driver visibility of pedestrians using the

sidewalk, and same shall be subject to the review and approval of the Township Engineering Department;

- (7) In connection with development or redevelopment of each of the lots, the developer of such lot shall meet with the Historical Society of the Somerset Hills to discuss the proposed dwelling to ensure same is consistent with the existing neighborhood. The Applicants shall not be required to obtain approval for same from the Historical Society, but rather, shall consider any comments from the Historical Society so as to cooperatively attempt to maintain the character of the neighborhood;
- (8) The Applicants shall inform all contractors working on the Property of the potential for uncovering historical artifacts, and if any such artifacts are found the Applicants shall advise the Historical Society of the Somerset Hills;
- (9) The Applicants shall obtain certification from the Somerset-Union Soil Conservation District;
- (10) The Applicants shall pay the requisite development fees in accordance with Section 21-86 of the Land Development Ordinance;
- (11) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, including, but not limited to, the Planning Board's 2008 Approval (a copy of which is attached hereto), to the extent same are not inconsistent with the terms and conditions set forth herein;
- (12) 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; and
- (13) 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, Cambria, Genirs, Kraus, Tancredi, Seville

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 December 9, 2020.



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

Dated: December 9, 2020