

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v2

Re-organization & Regular Meeting
January 6, 2021

Ms. Kiefer called the meeting to order at 7:33 PM.

FLAG SALUTE

OPEN MEETING STATEMENT

Ms. Kiefer read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this regular and reorganization 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 mailed to the Bernardsville News, Whippany, New Jersey; the Courier News, Bridgewater, New Jersey; and was filed with the Township Clerk all on October 5, 2021 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 testimony heard after 10:30 PM"

REORGANIZATION SESSION

OATHS OF OFFICE

Ms. Wolfe swore in the following members:

- Lisamarie Baumann, Regular Member, four-year term expiring 12/31/24
- Jeanmarie Genirs, Regular Member, four-year term expiring 12/31/24
- Joseph Pavlosky, Alternate #1, two-year term, expiring 12/31/22
- Rakesh Agarwal, Alternate #2, two-year term, expiring 12/31/21

Continuing Members: Breslin, Cambria, Kraus, Pochtar, Tancredi

ROLL CALL:

Members Present: Agarwal, Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: NONE
Also Present: Amanda C. Wolfe, Esq., Thomas J. Quinn, PE, CME; Township Planner,
David Schley, PP/AICP; Cyndi Kiefer.

NOMINATIONS FOR CHAIRMAN OF THE BOARD

Ms. Kiefer called for nominations for the office of Chairman of the Board for the year 2021, term to expire December 31, 2021. A motion was made by Mr. Tancredi and seconded by Ms. Genirs, nominating Bradley Breslin.

All in favor and carried that Mr. Breslin serve as Chairman.

NOMINATIONS FOR VICE CHAIRMAN OF THE BOARD

Chairman Breslin called for nominations for the office of Vice Chairman of the Board for the year 2021, term to expire December 31, 2021. A motion was made by Mr. Tancredi and seconded by Ms. Pochtar, nominating Jeanmarie Genirs.

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

NOMINATIONS FOR VICE CHAIRMAN PRO TEMP OF THE BOARD

Chairman Breslin called for nominations for the office of Vice Chairperson Pro Temp of the Board for the year 2021, term to expire December 31, 2021. A motion was made by Ms. Genirs and seconded by Mr. Kraus, nominating David Tancredi.

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

APPOINTMENT OF BOARD ENGINEER

Chairman Breslin called for nominations for Board Engineer for the year 2021. A motion was made by Mr. Tancredi and seconded by Ms. Genirs, nominating Thomas J. Quinn, PE, CME.

Motion by Mr. Tancredi to adopt [Resolution #21-02 Professional Services Contract](#) for 2021 Zoning Board of Adjustment Engineer and to appoint Thomas J. Quinn, PE, CME, as Board Engineer. Ms. Genirs seconded.

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

Motion carried.

APPOINTMENT OF BOARD PLANNER

Chairman Breslin called for nominations for the position of Board Planner for 2021. Moved by Mr. Tancredi and seconded by Mr. Kraus, all in favor and carried, that David Schley, PP, AICP, be appointed as Board Planner.

APPOINTMENT OF BOARD SECRETARY

Chairman Breslin called for nominations for the position of Board Secretary for 2021. Moved by Mr. Tancredi and seconded by Ms. Pochtar, all in favor and carried, that Cyndi Kiefer be appointed as Board Secretary.

APPOINTMENT OF BOARD ATTORNEY

Chairman Breslin called for nominations for Board Attorney for the year 2021. A motion was made by Ms. Pochtar and seconded by Mr. Kraus, nominating Steven K. Warner, Esq.

Motion by Ms. Pochtar to adopt [Resolution #21-01 Professional Services Contract](#) for 2021 Zoning Board of Adjustment Attorney and to appoint Steven K. Warner, Esq., as Board Attorney. Mr. Kraus seconded.

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

Motion carried.

ADOPTION OF RULES AND REGULATIONS OF THE BOARD

Motion by Mr. Tancredi to adopt [Resolution #21-03 Zoning Board of Adjustment Rules and Regulations](#) for the Year 2021. Ms. Genirs seconded.

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

Motion carried.

ADOPTION OF SCHEDULE OF MEETING DATES

November 11, 2021 was removed from the Schedule of Meeting Dates.

Motion by Mr. Kraus to adopt [Resolution #21-04 Schedule of Meeting for the Year 2021](#) *as revised*. Mr. Tancredi seconded.

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

Motion carried.

ADOPTION OF OFFICIAL NEWSPAPERS

The motion was made by Mr. Tancredi and seconded by Ms. Pochtar that the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, be designated as the official newspapers for 2021 for all advertisement and notices required by law to be published by the Board. The Daily Record of Morristown, NJ, and the Star Ledger of Newark, NJ are designated as newspapers which may be given notice by the Board Secretary when the publication schedule of the Bernardsville News or Courier News does not enable it to publish advance notice of special, rescheduled, or emergency meetings.

All in favor and carried that the Bernardsville News and the Courier News be designated as the official newspapers of the Board for the year 2021.

ADOPTION OF POLICY OF ADEQUATE NOTICE

Motion by Ms. Pochtar to adopt [Resolution #21-05 Policy of Adequate Notice](#) for the Year 2021. Mr. Kraus seconded.

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

Motion carried.

ADJOURNMENT OF THE REORGANIZATION PORTION OF THE MEETING

On motion by Ms. Genirs, seconded by Mr. Tancredi, all in favor and carried, the re-organization portion of the meeting was adjourned at 7:46 PM.

REGULAR SESSION

APPROVAL OF MINUTES

[December 9, 2020 – Regular Session](#) – on motion by Mr. Kraus, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were accepted as drafted. Abstentions for those who were not present: Ms. Pochtar. Abstentions for those who were not members: Mr. Agarwal, Ms. Baumann, Mr. Pavlosky.

APPROVAL OF RESOLUTIONS

[Porcelli, Joseph J.](#); Block 709, Lot 5; 19 Southard Place; Bulk Variance; ZB20-019 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Genirs seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Tancredi
Nay: NONE
Ineligible: Agarwal, Baumann, Pavlosky, Pochtar

Motion carried.

[Boyle, Joseph A. & Jennifer H.](#); Block 1002, Lot 16; 60 Walnut Circle; Bulk Variance; ZB20-022 (approved) – Ms. Genirs moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Tancredi
Nay: NONE
Ineligible: Agarwal, Baumann, Pavlosky, Pochtar

Motion carried.

[Cohen, David/Patel-Cohen, Mital](#); Block 202, Lot 16; 154 Old Farm Road; Bulk Variance; ZB20-018 (approved) – Mr. Kraus moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Breslin, Cambria, Kraus, Tancredi
Nay: NONE
Ineligible: Agarwal, Baumann, Genirs, Pavlosky, Pochtar

Motion carried.

[Raymond, Michael/Staub, Stacey A.](#); Block 1104, Lot 17; 22 Monroe Place, Bulk Variances; ZB20-023 (approved)
– Ms. Genirs moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Tancredi
Nay: NONE
Ineligible: Agarwal, Baumann, Pavlosky, Pochtar

Motion carried.

PUBLIC HEARING (continued from 11/04/2020)

Silver Living LLC; Block 1607, Lot 2; 14 North Maple Avenue; Bulk Variances; ZB20-015

Present: Frederick B. Zelle, Esq., Attorney for the Applicant

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, requested that this application be carried *with no further notice* to 03/03/2021. Mr. Schley advised Mr. Zelle that the deadline for submission of revised materials and replenishment of the escrow account as requested in a letter dated 12/22/2020 shall be close-of-business 01/29/2021 in order to preserve the requested hearing date and notice. Mr. Zelle agreed to the terms as stated and the application was carried as requested.

COMPLETENESS AND PUBLIC HEARING

Khoshaba, Ursula; Block 302, Lot 4; 44 Old Farm Road; Bulk Variances; ZB20-025

Present: Frederick B. Zelle, Esq., Attorney for the Applicant
David E. Fantina, PE, Engineer for the Applicant
Ursula Khoshaba, Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application.

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant. He stated that the subject property is located at 44 Old Farm Road and that the proposed project consists of construction of an in-ground pool and spa, surrounding patio and a pavilion with an attached pergola. The pool requires relief for not being located to the rear of adjacent dwellings and Mr. Zelle stated that there is no conforming location on the subject property due to the orientation of the house on adjacent Lot 7 (30 Old Farm Road). He added that the pavilion/pergola requires relief for minimum distance from Ms. Khoshaba's house, noting that the proposed structure is being built over an existing permanent grilling area and that moving that area in order to meet the ordinance requirements would present an undue hardship. He opined that relief for both variances could be granted under the "c(1)" or "hardship" positive criteria and he saw no negative detriment to the public good since the project would be virtually invisible to the adjacent properties due to the wooded areas around the rear of the subject property. In addition, he saw no impairment to the intent and purpose of the zoning plan and ordinances.

Mr. Fantina, Ms. Khoshaba, Mr. Schley and Mr. Quinn were duly sworn by Ms. Wolfe.

Exhibit A-1 – an 11-page compendium of colored computer-generated images of the subject property with the proposed improvements, was entered into evidence.

Ursula Khoshaba, Applicant residing at 44 Old Farm Road, gave a brief description of the project noting that in addition to the existing buffering vegetation which she felt provides extensive privacy for both her and her neighbors, she intends to install more landscaping such as flowers and small trees throughout the project. She

testified that the pavilion/pergola would be completely open on the sides and she stipulated that it would not exceed 20 feet in height. Finally, she added that all of the neighbors supported the application.

Ms. Khoshaba stipulated, as conditions of approval, to all comments made in Mr. Schley's memo dated 12/31/2020 and to all comments in Mr. Quinn's memo dated 01/04/2021. In addition, she stipulated to the removal of an existing spa prior to the completion of the project.

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

David E. Fantina, PE, professional engineer with a business address of Bernardsville, NJ, was accepted by the Board as an expert in the field of civil engineering. He gave a brief description of the property and the orientation of the dwelling on adjacent Lot 7 which made it impossible to place the proposed pool in a conforming location. He further testified that there is a stream that flows to the south of the property and that because the conservation area associated with that stream extends onto the southeasterly corner of the Applicant's property, a stream buffer conservation easement would be deeded to the Township. He stated no trees would be removed and that the project would be consistent with the character of the surrounding neighborhood.

Mr. Fantina provided testimony concerning the stormwater management plan for the project which included a drywell. Mr. Quinn explained that although the entire pool area is counted towards imperious coverage, the water surface area which is considered neutral from a stormwater management perspective, can be subtracted out for the purposes of stormwater management calculations making this project is exempt. Based on that assessment, Mr. Fantina asked that the drywell be removed from the project and Mr. Quinn confirmed that this would be consistent with the Township's interpretation of the ordinance.

Mr. Fantina stipulated to all applicable comments in both Mr. Schley's memo and Mr. Quinn's memo.

Mr. Zelley stated that he had taken the photos submitted with the application and that they accurately depicted the property in its current condition.

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

Mr. Zelley declined to offer a summation.

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. Tancredi seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Reilly, Peter & Bernadette; Block 5701, Lot 47; 48 Lyons Place; Bulk Variance; ZB20-024

Present: Peter & Bernadette Reilly, Applicants

Ms. Wolfe stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application.

Both Applicants, Mr. Schley and Mr. Quinn were duly sworn by Ms. Wolfe.

Peter Reilly, Applicant residing at 48 Lyons Place, testified that the project, installation of an in-ground pool/spa and patio to the rear of the existing dwelling, required relief for not being located behind the rear of an adjacent dwelling.

Bernadette Reilly, Applicant residing at 48 Lyons Place, described the four (4) pictures submitted with the application (her copy was marked **Exhibit A-1**) and testified that they accurately depict the property in its current condition. **Exhibit A-2**, an aerial photo, illustrated that because of the orientation of the house at 58 Lyons Place (adjacent property), there is no conforming location for a pool on the subject property.

Mr. Reilly stipulated to, as conditions of approval, all applicable comments made in Mr. Schley's memo dated 12/31/2021 and Mr. Quinn's memo dated 01/04/2021. He also testified that none of the neighbors had voiced any concerns about the project.

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

The Applicants declined to offer a summation.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" 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 Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

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

Motion carried.

COMMENTS FROM MEMBERS

Chairman Breslin cancelled the special meeting scheduled for 01/14/2021.

COMMENTS FROM STAFF

It was noted that due to the large number of incoming applications, Ms. Kiefer would be polling the Board for availability for a special meeting currently scheduled for 03/11/2021.

ADJOURN

On motion by Mr. Tancredi and second by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 9:06 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 02/03/2021

02/02/2021dsawsw



Resolution of the Township of Bernards Zoning Board of Adjustment

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #21-02

Professional Services Contract for 2021 Board of Adjustment Engineer

Awarded to Thomas J. Quinn, PE, CME, NJ License #24GE04107200 of the firm EKA Associates, PA

In the Not to Exceed Amount of \$ 5,000 for Engineering Services and

In the Not to Exceed Amount of \$5,000.00

(Excluding Charges covered by Escrow Funds)

BE IT RESOLVED, by the Bernards Township Zoning Board of Adjustment (herein "Board"), Somerset County, New Jersey, as follows:

WHEREAS, the Bernards Township Zoning Board of Adjustment wishes to engage the services of an engineer to perform engineering services as required for the year 2021, which is a "professional service" as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, Bernards Township Zoning Board of Adjustment has special confidence in Thomas J. Quinn, PE, CME, NJ License #24GE04107200 of the firm EKA Associates, PA by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2021 Current Professional Engineering Services of the Planning Board Other Expenses, account #1-01-21-185-204 for a not to exceed amount of \$5,000.00.

NOW BE IT RESOLVED by the Township of Bernards Zoning Board of Adjustment that a professional service contract be awarded to Thomas J. Quinn, PE, CME NJ License #24GE04107200 of the firm EKA Associates, PA as follows:

1. The contract will encompass services as outlined in the submitted contract proposal dated November 16, 2020, appended to this resolution.
2. The contract term is from January 1, 2021 through December 31, 2021 at the hourly rate of \$135.00 at a not to exceed amount of \$5,000.00 plus escrow funds paid by applicant in accordance with Bernards Township Ordinance No.1018.
3. The line item appropriation for professional engineering services of \$5,000.00 shall be charged to line account #1-01-21-185-204.
4. Billings must be rendered by the contractor within 30 days of service delivery
5. Any modification to this contract shall be in writing and signed by both parties and upon obtaining said signatures shall immediately become part of the contract.
6. No payments in excess of the "not to exceed" contract amounts will be approved, unless such services/expenditures are negotiated and agreed upon in advance of service delivery.
7. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to PL 1975, c127, which is attached to this resolution as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Bernards Township Zoning Board of Adjustment engage Thomas J. Quinn, PE, CME NJ License #24GE04107200 of the firm EKA Associates, PA designated as the individual specifically authorized to act in the Board's behalf and in his absence any other Engineer in that firm as he may designate.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Thomas J. Quinn, PE, CME, of the firm EKA Associates, PA, which contract [*appended to this resolution*] shall be available for inspection at the Bernards Township Zoning Board of Adjustment Offices during regular business hours.

I agree to the terms as stated in this Resolution and by signing this document, I am committed to follow all terms of this award.


Thomas J. Quinn, PE, CME., NJ License #24GE04107200

CFO CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for this contract. The line item appropriations to be charged are Board of Adjustment Fees and Compensation line account #1-01-21-185-204 in the not to exceed amount of \$5,000.00.

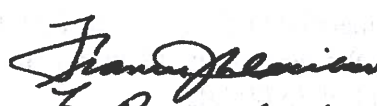


Date: December 29, 2020

Sean McCarthy, Chief Financial Officer

PURCHASING CERTIFICATION

I hereby certify that I have reviewed this resolution for accuracy.

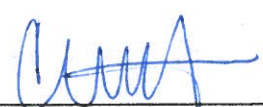

For Purchasing Agent

Date: December 18, 2020

Francis J. Decibus, QPA
Purchasing Agent

Dated:

ATTEST:



Cyndi Kiefer, Board Secretary

ADOPTED:



Bradley Breslin, Chairman



Resolution of the Township of Bernards Zoning Board of Adjustment

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #21-01

Professional Services Contract for 2021 Board of Adjustment Attorney
Awarded to Steven K. Warner, Esq. of the firm Ventura, Miesowitz, Keough & Warner PC
In the Not to Exceed Amount of \$ 20,000.00, including matters of litigation.
(Excluding Matters funded by Escrow)

BE IT RESOLVED, by the Bernards Township Zoning Board of Adjustment (herein "Board"), Somerset County, New Jersey, as follows:

WHEREAS, the Bernards Township Zoning Board of Adjustment wishes to engage the services of an attorney to perform legal services as required for the year 2021, which is a "professional service" as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, this contract was awarded without public advertisement as defined in N.J.S.A. 19:44A-20-7 and pursuant to the provisions of N.J.S.A. 19:44A-20-4; and

WHEREAS, Bernards Township Zoning Board of Adjustment has special confidence in Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner PC by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2021 Current Fund Budget, Board of Adjustment; Other Expenses-Fees and Compensation account #1-01-21-185-204 (\$2,500.00) and Board of Adjustment-Litigation Fees and Compensation account # 1-01-21-185-20A (\$17,500.00) for a total not to exceed amount of \$ 20,000.00.

NOW BE IT RESOLVED by the Township of Bernards Zoning Board of Adjustment that a professional service contract be awarded to Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner PC as follows:

1. The contract will encompass services as outlined in the submitted contract proposal dated November 10, 2020, appended to this resolution.
2. The contract term is from January 1, 2021 through December 31, 2021 at the hourly rate of \$185.00 at a not to exceed amount of \$20,000.00 plus escrow funds paid by applicant in accordance with Bernards Township Ordinance No.1018.
3. The line item appropriation for professional legal services of \$2,500.00 shall be charged to line account #1-01-21-185-204. The line item appropriation for matters of litigation of \$17,500.00 shall be charged line account #1-01-21-185-20A.
4. Billings must be rendered by the contractor within 30 days of service delivery
5. Any modification to this contract shall be in writing and signed by both parties and upon obtaining said signatures shall immediately become part of the contract.
6. No payments in excess of the "not to exceed" contract amounts will be approved, unless such services/expenditures are negotiated and agreed upon in advance of service delivery.

7. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to PL 1975, c127, which is attached to this resolution as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Bernards Township Zoning Board of Adjustment engage Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner as its legal counsel for the year 2021, with Steven K. Warner, Esq., of that firm designated as the individual specifically authorized to act in the Board's behalf and, in his absence any other attorney in that firm as he may designate.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner PC, which contract [*appended to this resolution*] shall be available for inspection at the Bernards Township Zoning Board of Adjustment Offices during regular business hours.

NOW THEREFORE BE IT FINALLY RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution.

I agree to the terms as stated in this Resolution and by signing this document, I am committed to follow all terms of this award.



Steven K. Warner, Esq.

CFO CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for this contract. The line item appropriations to be charged are Board of Adjustment Other Expenses, for Professional Legal Services, account Fees and Compensation #1-01-21-185-204 in the not to exceed amount of \$2,500.00 and the line item appropriation to be charged for Litigation Services is account #1-01-21-185-20A in the not to exceed amount of \$17,500.00.



Sean McCarthy, Chief Financial Officer

Date: December 29, 2020

PURCHASING CERTIFICATION

I hereby certify that I have reviewed this resolution for accuracy.



Francis J. Decibus, QPA
Purchasing Agent

Date: December 18, 2020

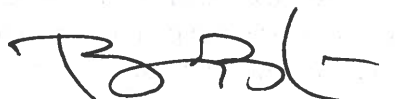
Dated:

ATTEST:



Cyndi Kiefer, Board Secretary

ADOPTED:



Bradley Breslin, Chairman

**TOWNSHIP OF BERNARDS
COUNTY OF SOMERSET
STATE OF NEW JERSEY
RULES AND REGULATIONS FOR THE YEAR 2021
ZONING BOARD OF ADJUSTMENT
RESOLUTION #21-03**

WHEREAS, N.J.S.A. 40:55D-8(a) requires each municipal agency to adopt reasonable rules and regulations for the administration of its functions, powers and duties; and

WHEREAS, N.J.S.A. 40:55D-8(a) further requires that the municipal agency furnish a copy of the adopted rules and regulations to any person upon request; and

WHEREAS, N.J.S.A. 40:55D-8(a) further requires that the municipal agency's rules and regulations thereto be maintained in the office of the administrative officer;

THEREFORE, BE IT RESOLVED, that the attached Rules and Regulations for the Zoning Board of Adjustment of the Township of Bernards be and the same are hereby adopted; and

BE IT FURTHER RESOLVED that copies of this resolution and copies of the attached said Rules and Regulations be maintained in the office of the Secretary of the Zoning Board of Adjustment and the Clerk of the Township of Bernards.

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

I, Cyndi Kiefer, Secretary to the Zoning Board of Adjustment of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Zoning Board of Adjustment on January 6, 2021.

CYNDI KIEFER, Board Secretary

Dated: January 6, 2021

**TOWNSHIP OF BERNARDS
COUNTY OF SOMERSET
STATE OF NEW JERSEY
SCHEDULE OF MEETINGS FOR THE YEAR 2021
ZONING BOARD OF ADJUSTMENT
RESOLUTION #21-04 v2**

PLEASE TAKE NOTICE that the Zoning Board of Adjustment of the Township of Bernards will meet to discuss or act upon public business at 7:30 PM on each of the dates in the year 2021 as set forth below, at the Municipal Building, Collyer Lane, Basking Ridge, New Jersey:

Regular Meetings:	February 3	August 4
	March 3	September 8
	April 7	October 6
	May 5	November 3
	June 9	December 8
	July 7	

Special Meetings:	January 14	May 13
	February 11	June 17
	March 11	September 16
	April 15	October 14

January 5, 2022 – Reorganization Meeting

Notice of any revisions to the above schedule will be posted and advertised as required by law.

Formal action may be taken at all regular and special meetings.

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

I, Cyndi Kiefer, Secretary to the Zoning Board of Adjustment of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Zoning Board of Adjustment on January 6, 2021.

CYNDI KIEFER, Board Secretary

January 6, 2021

**TOWNSHIP OF BERNARDS
COUNTY OF SOMERSET
STATE OF NEW JERSEY
ZONING BOARD OF ADJUSTMENT
RESOLUTION #21-05
POLICY OF ADEQUATE NOTICE**

WHEREAS, the Open Public Meeting Act, Chapter 231 of the Public laws of the State of New Jersey requires that henceforth no Public Body shall hold a meeting unless adequate notice thereof has been provided to the public in the manner and under the circumstances therein set forth,

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards that adequate notice, as defined in said Act, be:

1. Posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge;
2. Mailed, telephoned, electronic or hand delivered to the Bernardsville News, Whippany, NJ and the Courier News, Bridgewater, NJ being designated as the official newspapers of the Township;
3. Filed with the Township Clerk;
4. Mailed to any person who has so requested such notice for the forthcoming year via electronic mail;

BE IT FURTHER RESOLVED, that the foregoing notice be posted, mailed and submitted in accordance with said Act.

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

I, Cyndi Kiefer, Secretary to the Zoning Board of Adjustment of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Planning Board on January 6, 2021.

CYNDI KIEFER, Board Secretary

January 6, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

JOSEPH PORCELLI

Case No. ZB20-019

RESOLUTION

WHEREAS, **JOSEPH PORCELLI** (the “Applicant”) has 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 25 foot by 25 foot (625 square feet) two-car garage addition on the west side of the existing one-story dwelling, the widening of the existing driveway to a uniform 24 feet width, and the removal of an existing shed, located on property identified as Block 709, Lot 5 on the Tax Map, more commonly known as 19 Southard Place (the “Property”):

A variance for a proposed rear-yard setback of approximately 23.5 feet to the addition, whereas the existing rear-yard setback is approximately 12 feet to the existing deck, and the minimum required rear-yard setback in the R-6 (3/4 acre) residential zone is 50 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 December 9, 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 Applicant 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 complete.
2. The Property is a slightly undersized (20,066 square feet; 21,780 square feet required), lot located in the R-6 (3/4 acre) residential zone located on the inside of the 90° curve

in Southard Place.¹ The front of the dwelling faces north, so the rear yard is to the south. Since the depth of the Property running north-to-south is only 101 feet, the minimum required 50-foot front yard and 50-foot rear yard result in a one (1) foot deep building envelope.

3. The Property is presently improved with a one-story dwelling, a patio, a deck, a shed, and an asphalt driveway. The Applicant's existing rear deck is approximately 12 feet from the rear (southerly) property line, while the rear building wall of the dwelling is set back 23.5 feet from said property line. The proposed addition extends the rear building wall of the dwelling such that it is essentially parallel to the rear property line, maintaining, but not exacerbating the existing 23.5-foot nonconforming setback. The setback at the westerly rear corner of the addition is 24.1 feet because the rear building wall is not exactly parallel to the rear property line.

4. The Applicant proposes to construct a 25 foot by 25 foot (625 square feet) two-car garage addition on the west side of the existing dwelling and to widen the existing driveway such that it is a uniform 24-foot width from the garage to the street. The Applicant further proposes to remove the existing 80 square foot shed located in the northerly side-yard. Given that the proposed addition is located entirely on the existing driveway area and the existing 80 square foot shed is being removed, the proposed 625 square foot addition and proposed driveway widening result in a net increase in impervious coverage of only 425 square feet.

5. The Applicant's proposal is depicted on Design Plans prepared by Courtney Lowry, A.I.A., dated August 27, 2020, last revised October 2, 2020, same consisting of two (2) sheets and a Survey prepared by Andrew J. Kirtland, P.L.S., dated July 7, 2020, unrevised, same consisting

¹ The Property is not a corner lot because by definition a corner lot is located at a street intersection. However, the yards are designated in the same manner, meaning the lot effectively has two front yards, one side yard, and one rear yard.

of one (1) sheet. The Applicant also submitted a compendium of eight (8) photographs of the Property, same consisting of one (1) sheet.

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

7. 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.

8. Joseph Porcelli, the Applicant, having an address of 19 Southard Place, was duly sworn according to law. Mr. Porcelli testified that the existing dwelling does not have a garage. He explained that the proposed addition will allow him to construct a garage to store his vehicles and lawnmower. On discussion of the November 13, 2020 Review Memorandum prepared by Mr. Schley, the Board Planner, Mr. Schley explained that, given the required front- and rear-yard setback requirement of 50 feet, the Applicant has a one (1) foot deep building envelope, making it impossible to locate the proposed addition in a conforming location. Mr. Schley further explained that the proposal requires the Applicant to obtain a rear-yard setback variance but noted that the existing nonconforming rear-yard setback is not being exacerbated by the proposal. On discussion, Mr. Porcelli confirmed that he is not proposing to increase the impervious coverage beyond the proposed 425 square feet associated with the widening of the driveway. On discussion of tree removal and replacement, Mr. Porcelli testified that two existing trees will be removed to accommodate the proposed widening of the driveway and stipulated, as a condition of approval, to submitting a tree removal, protection, and replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance. He further stipulated to obtaining an engineering permit prior to doing any work within the Southard Place right-of-way.

9. On discussion of the December 4, 2020 Review Letter prepared by Mr. Quinn, the Board Engineer, Mr. Quinn noted that the proposal results in a 425 square foot increase in impervious coverage and, therefore, is exempt from the Township stormwater management requirements. Mr. Porcelli confirmed that he did not expect the proposal to have a negative impact on the adjacent properties particularly since the stormwater runoff will run toward the adjacent roadway. Mr. Quinn noted that the plans are silent on the proposed limit of disturbance and soil erosion and sediment control measures, but that he believed the limit of disturbance would be below the 5,000 square foot threshold established by the Soil Conservation District and, therefore, would not require Soil Conservation District certification. Mr. Porcelli stipulated, as a condition of approval, to revising the plans to include a note regarding same.

10. On questioning as to the photographs submitted with the application materials, Mr. Porcelli testified that his architect had taken the photographs in September or October of 2020 and that said photographs accurately depict the Property as it presently exists. The Applicant stipulated that the exterior of the proposed addition would be consistent as to architectural style, color, and materials to the balance of the existing dwelling. On questioning as to whether Mr. Porcelli has a commercial van, Mr. Porcelli confirmed that he did have such a van and that the van would be able to fit in the garage. On questioning as to whether he had heard any objections from his neighbors, Mr. Porcelli testified that he had not and that the neighbors he spoke to expressed support for the proposal particularly since his dwelling lacks a garage.

11. Christopher Riggi, having an address of 3 Southard Place, immediately adjacent to the Property, testified that he is in support of the proposal, particularly since many of the dwellings in the immediate neighborhood have two car garages. He contended that the construction of the

garage would make the Property more consistent with the neighborhood and would improve the overall aesthetics of the streetscape.

DECISION

12. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied his 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).

13. As to the c(1) positive criteria for the requested setback relief, the Board finds that the Applicant has demonstrated that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, him as the owner of the Property. In this regard, the Board recognizes that the location of the Property inside of the 90° curve of Southard Place, such that the required setbacks result in a one (1) foot deep building envelope, together with the lawfully existing improvements thereon, including the orientation of the existing dwelling, make it impossible to construct the proposed improvements in a conforming location. The Board finds that the Applicant has demonstrated that the adjacent properties are developed and that no additional land is available to bring the Property into, or closer to, conformity. The Board further finds that the Applicant has demonstrated that the hardship that would be incurred if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. As such, the Board finds that the Applicant has demonstrated the positive criteria for subsection c(1) variance relief.

14. As to the positive criteria for “c(2)” or “flexible c” variance relief, the Board finds that the construction of a two-car garage will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. 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 improvements will improve the appearance of the Property, provide aesthetic benefits to the neighborhood, particularly since it will allow the Applicant to store a commercial van in the garage, and otherwise improve the housing stock in the community. The Board further recognizes that the Applicant's proposal will not result in the exacerbation of an existing nonconforming rear-yard setback. Here, the Board notes that the proposed addition will be entirely located on existing pavement and the existing 80 square foot shed will be removed, thereby reducing the proposed increase in impervious coverage. As such, the Board 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 conditions set forth below. Based upon the forgoing, the Board finds that the Applicant has 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 Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan or zoning ordinances. The Board considers, as to the first prong of the negative criteria, that the existing nonconforming setback deviation is not being exacerbated. The Board further considers that the proposal will allow the Applicant to store a commercial van in a garage, rather than in the driveway, where it is not visible to the adjacent property owners. The Board finds that the modest detriment is mitigated by the conditions stipulated to by the Applicant, and set forth below, and the Board further recognizes that no member of the public commented on, or objected to, the application and, in fact, one of the most affected neighbors expressed support for the Applicant's proposal. As to the second prong of

the negative criteria, the Board recognizes that, given that garages are permitted structures and that the magnitude of the bulk variance relief sought is modest, granting the requested relief certainly

does not rise to the level of constituting a rezoning of the Property.

WHEREAS, the Board took action on this application at its meeting on December 9, 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 6th day of January, 2021, that the application of **JOSEPH PORCELLI**, 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 Applicant shall remove the existing 80 square foot shed;
3. The exterior of the proposed addition shall be substantially consistent as to architectural style, color, and materials to the balance of the exterior of the existing dwelling;
4. The Applicant shall submit a tree removal, protection, and replacement plan same to be subject to the review and approval of the Township Engineering Department;
5. The Applicant shall obtain an engineering permit prior to any work within the Southard Place right-of-way;
6. The Applicant shall revise the plans to include a note that the proposal does not require certification from the Soil Conservation District as the proposed limit of disturbance is less than 5,000 square feet and same shall be subject to the review and approval of the Township Engineer;
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

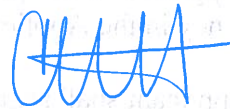
9. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Breslin, Cambria, Genirs, Kraus, Tancredi

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 January 6, 2021.



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

Dated: January 6, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

JOSEPH and JENNIFER BOYLE

Case No. ZB20-022

RESOLUTION

WHEREAS, **JOSEPH and JENNIFER BOYLE** (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/spa with surrounding patio and 13 foot by 15 foot pergola, located on property identified as Block 1002, Lot 16 on the Tax Map, more commonly known as 60 Walnut Circle (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 December 9, 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-6 (3/4 acre) Residential Zone and consists of 39,941.5 square feet (0.917 acres). It is an irregularly shaped lot with frontage on Walnut Circle. The Property is presently improved with a two-story, single-family residential dwelling, paver patios, and an associated driveway.
3. The Applicants propose to construct an approximately 18 foot by 34 foot (612 square feet) inground swimming pool/spa with surrounding patio adjoining an existing patio at the

rear of the existing dwelling. The Applicants also propose to construct a 13 foot by 15 foot (195 square feet) pergola on the existing patio. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Land Development Ordinance, which states “the pool shall be located behind the rear building line of existing residential structures on adjoining lots.” The proposed pool is not to the rear of the adjoining dwelling on Lot 17 to the west (64 Walnut Circle) because the front of the dwelling on adjoining Lot 17 is angled toward the Applicants’ lot. The only potential conforming pool location on the Applicants’ lot is near the southerly rear corner of the Property, approximately 150 feet from the rear entrance to the Applicants’ dwelling.

4. The Applicants’ proposal is depicted on Plans prepared by Thomas W. Skrable, P.E., P.P., C.M.E., dated July 16, 2020, unrevised, same consisting of one (1) sheet; and a Survey prepared by John J. Bezuyen, P.L.S., dated August 21, 2020, unrevised, same consisting of one (1) sheet. The Applicants also submitted a compendium of four (4) photographs of the Property, same consisting of one (1) sheet and a photograph of the proposed pergola.

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. Joseph Boyle, one of the Applicants, having an address of 60 Walnut Circle, was duly sworn according to law. Mr. Boyle testified that he has lived in Basking Ridge since 1968 and that he purchased the Property from his parents in 1996. He explained that he is seeking variance relief for the location of a proposed pool because said pool is not located behind the rear building line of the dwelling on adjacent Lot 17.

8. Mr. Boyle testified that he had taken the photographs submitted with the application

materials during late summer/early fall and confirmed that said photographs constitute an accurate depiction of the Property as it presently exists. Referencing the photographs, Mr. Boyle explained that there is existing landscaping that would buffer the view of the pool from the adjacent properties, but stated that he would install additional landscaping if necessary. He further explained that all of his neighbors have pools. Mr. Boyle testified that the Applicants will provide consistent landscaping and fencing around the Property to not only protect the privacy of the adjacent neighbors, but also to maintain their own privacy.

9. On discussion of the November 13, 2020 Review Memorandum prepared by the Board Planner, Mr. Schley, Mr. Boyle testified that the only conforming location for the pool is in the southerly rear corner of the Property, approximately 150 feet from the rear entrance to the dwelling. He explained that having the pool so far away was not ideal because it would be more difficult for the Applicants to see the pool from their kitchen window to ensure their children are safely using the pool and contended that locating the pool in the conforming location would result in safety concerns. On discussion of whether the proposal would have a detrimental impact on the adjacent properties, Mr. Boyle explained that the existing landscaping provides a sufficient buffer. He contended that locating the pool in a conforming location would have more of a detrimental impact on the adjacent properties than would the location of the pool as proposed. Mr. Boyle stipulated to complying with the conditions set forth in Mr. Schley's Review Memorandum.

10. As to the December 1, 2020 Review Letter prepared by the Board's Engineer, Mr. Quinn, Mr. Boyle stipulated to complying with the comments and conditions set forth therein. He testified that he would work with the Township Engineer on the design of the stormwater management system and stipulated that any such design would be subject to Mr. Quinn's review and approval. Mr. Boyle acknowledged that the proposal will require certification from the Soil

Conservation District if it exceeds 5,000 square feet.

11. As to the Review Letter prepared by the Environmental Commission, Mr. Boyle acknowledged that the construction of any future additions or impervious surface coverage features would result in the exceedance of the maximum permitted lot coverage and stipulated to complying with the best management practices available when discharging pool water.

12. On questioning, Mr. Boyle testified that the pool equipment will be located to the right of the HVAC unit. On further questioning, he explained that the Applicants are not proposing any additional lighting around the pool.

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, finds 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 dwelling on Lot 17 (64 Walnut Circle) to the west. The proposed pool would have to be moved approximately 150 feet from the rear entrance to the dwelling to comply with the pool location requirement and locating the pool in said location would result in safety concerns due to limited visibility of the pool from the dwelling. 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 restrict the Applicants’ ability to monitor their children. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated 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 on December 9, 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 6th day of January, 2021, that the application of **JOSEPH and JENNIFER BOYLE**, 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 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 to provide sufficient buffering of the pool from the westerly property line, the Applicants shall provide same in accordance with the reasonable requests of the Township Planner;

(3) 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;

(4) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission attached to the November 13, 2020 Review Memorandum of the Township Planner;

(5) The Applicants shall revise the plans to include the correct impervious coverage calculations as the submitted plans include impervious cover calculations that depict a net increase of 1,555 square feet of additional coverage, while a drainage calculation indicates that the proposed drainage system has been designed for 1,621 square feet of additional coverage. It appears that the existing impervious coverage (5,633 square feet) is correct and that the new impervious coverage should be 1,360 square feet based on the proposed pool patio area (1,330 square feet) plus the proposed pool equipment area (30 square feet). The calculations include proposed pergola area of an additional 195 square feet, however, the pergola is proposed to be located on the existing patio area and does not represent new impervious cover. The revised calculations shall be subject to the review and approval of the Township Engineering Department;

(6) The site plan provides a drainage retention design sized for 2” of runoff over 1,621 square feet of new impervious cover. The Township requires storage equivalent to 3” of runoff over all new impervious cover for minor development such as this. The pool water surface, while it does represent an impervious surface and is properly included in the impervious cover calculation for the lot, does not have to be included in the detention area designed for 3” of runoff because there is typically 6” to 12” of freeboard between the pool coping and water surface elevation, so that rainfall is typically collected rather than shed from this area. The Applicants’ engineer shall revise the detention system volume calculation as required to reflect 3” over the net amount of new impervious surface excluding the pool water surface elevation and same shall be subject to the review and approval of the Township Engineering Department;

(7) The Applicants shall revise the plans to provide a proposed volume breakdown for the drainage system based on the appropriate sectional view in order to

confirm the summary volume number provided on the plans;

- (8) The Applicants shall revise the plans to show the location of both the existing HVAC unit and the proposed pool equipment as the plan currently shows that the proposed pool equipment will conflict with the existing HVAC equipment;
- (9) The Applicants shall revise the detention system detail to note that a soil log and permeability testing is required within the system footprint to confirm the absence of groundwater within 2 feet of the bottom of the proposed infiltration system and confirm sufficient permeability to evacuate all collected runoff within 72 hours, per the NJ Best Management Practices manual. The system may have to be redesigned to a gravity discharge system if the soil investigation cannot establish these parameters;
- (10) The Applicants are advised that the Township Engineering Department may require additional grading information prior to the issuance of a permit;
- (11) The Applicants shall revise the plans to include a note quantifying the proposed limit of disturbance, and if the disturbance exceeds 5,000 square feet, the Applicants shall obtain certification from the Soil Conservation District;
- (12) The Applicants shall extend the silt fence to shadow the downhill side of the proposed wheel cleaning blanket and the wheel cleaning blanket shall be extended to meet the existing driveway and the plans shall revise the plans accordingly;
- (13) Any lighting in the pool or pergola area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (14) 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;
- (15) 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
- (16) 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, Genirs, Kraus, 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 January 6, 2021.



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

Dated: January 6, 2021.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

DAVID COHEN and MITAL PATEL-COHEN

Case No. ZB20-018

RESOLUTION

WHEREAS, **DAVID COHEN and MITAL PATEL-COHEN** (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 (1) a two-story addition, (2) a two-tiered deck, and (3) an inground swimming pool with surround, same to be located on property identified as Block 202, Lot 16 on the Tax Map, more commonly known as 154 Old Farm Road (the “Property”):

1. A variance for a proposed front-yard setback to the addition of 77.5 feet, whereas the existing front-yard setback is 46.6 feet (as approved by the Board in 2017), and the minimum required front-yard setback is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
2. 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 December 9, 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 deep lot located in the R-1 (3 acre) Residential Zone and consists of 3 acres with frontage on Old Farm Road. The Property is presently improved with a two-story,

single-family residential dwelling, wood deck, enclosed porch, patio, wooden shed, and asphalt driveway. The entire dwelling is located within the required front-yard setback and the majority of the rear yard of the Property consists of steep slopes greater than 15%. The disturbance required for the proposed pool and decking complies with the Steep Slope Ordinance requirements, however, if the pool were to be moved further into the rear yard in order to comply with the pool location requirement, relief from the Steep Slope Ordinance would likely be required.

3. In 2017, the Board granted a prior property owner a front-yard setback variance permitting an addition to the rear of the dwelling and a new open front porch (#ZB16-029 Nuotare Investments, LLC). Prior to the front porch being added, the pre-existing front-yard setback was approximately 50 feet, and the entire dwelling was located within the minimum required 100 foot front-yard setback area, making a conforming addition impossible. The current proposed addition, like the addition approved in 2017, requires a front-yard setback variance even though it is located behind the existing dwelling and will likely have little to no impact on views of the Property from the street.

4. The Applicants propose to construct a 473 square foot, two-story addition, a two-tiered deck, and a 15 foot by 30 foot (450 square feet) inground swimming pool to the rear of the existing dwelling. The proposed addition, which will replace an existing deck, consists of a 285 square foot first floor dining room and a 188 square foot second floor sitting room. The proposed deck includes a 1,016 square foot upper tier adjoining the addition, and a 1,050 square foot lower tier surrounding the proposed pool.

5. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Land Development Ordinance, which states “the pool shall be located behind the rear building line of existing residential structures on adjoining lots.” The proposed

pool is not to the rear of the adjoining dwellings on Lot 17 (164 Old Farm Road) to the northeast side, and Lot 15 (140 Old Farm Road) to the southwest side.

6. The Applicants' proposal is depicted on Plans prepared by Jonathon E. Booth, A.I.A., dated October 2, and November 5, 2020, same consisting of six (6) sheets. The Applicants also submitted a compendium of four (4) photographs of the Property.

7. The front-yard setback and pool location variance are governed by the criteria of N.J.S.A. 40:55D-70(c).

8. Board Member Eorio recused himself from hearing the matter.

9. 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.

10. David Cohen and Mital Patel-Cohen, the Applicants, having an address of 154 Old Farm Road, were duly sworn according to law. Mr. Cohen testified that the Applicants moved to the Property in 2019 and currently reside there with their two daughters. He explained that the dining room and living room are a single space and that the Applicants are seeking to expand the dwelling to allow for a large dining room table and a more functional living room. Mr. Cohen further explained that the addition will allow the Applicants to convert the existing dining room, located in the front of the dwelling, to a home office. He testified that both he and his wife are physicians and the home office is desirable, particularly given the COVID-19 pandemic. Mr. Cohen contended that the proposed addition would not be visible from the street or adjacent properties particularly given the proposed location such that it is sheltered from view by the existing improvements and its proposed location to the rear of the dwelling.

11. On questioning as to the photographs submitted with the application materials, Mr. Cohen testified that their architect, Jonathon Booth, had taken the photographs approximately two

months ago and confirmed that same constitute an accurate depiction of the Property as it presently exists. On questioning as to whether the Applicants had discussed the proposal with their neighbors, Mr. Cohen testified that he had spoken to the neighbors and that all three adjacent neighbors are in attendance at the hearing. He explained that there were discussions particularly as to the proposed pool location.

12. Mrs. Cohen testified that they have a large lot and that there may be alternative locations for the pool, but that a conforming location would result in safety concerns because the Applicants would not be able to see their children from the dwelling. She explained that the Applicants also wanted to have a bathroom near the pool and that locating the pool in the rear of the Property would be extremely impracticable and present a hardship.

13. On discussion of the November 13, 2020 Review Memorandum prepared by the Board Planner, Dave Schley, Mr. Schley explained the pool location requirement. He noted that it would be difficult to locate the pool in a conforming location given the existing steep slopes that would have to be disturbed. Mr. Schley further explained that the Applicants are further constrained by the location of the septic field. The Board Engineer, Thomas Quinn, explained that the rear of the Property is approximately 40 to 50 feet lower than the dwelling and is significantly wooded. Mr. Cohen testified that the Applicants did not want to disturb the steep slopes or remove trees and, therefore, felt that the proposed location is the best location for the pool. On questioning as to whether the proposed addition would be consistent in terms of architectural style, color, and materials to the exterior of the balance of the dwelling, Mr. Cohen advised that it would be and stipulated to same as a condition of approval.

14. Jonathon E. Booth, A.I.A., having a business address of 33 Bullion Road, Basking Ridge, 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. Mr. Booth introduced into evidence, as **Exhibit A-1**, a colorized version of Sheet 2 of the plans, dated October 2, 2020. Referencing **Exhibit A-1**, he described the proposed first floor addition and explained that the existing dining room is not functional because it is so small. Mr. Booth introduced into evidence, as **Exhibit A-2**, a colorized version of Sheet 3 of the plans, dated October 2, 2020. Referencing **Exhibit A-2**, he described the proposed second floor addition. He explained that the proposed addition requires variance relief because the dwelling is located within the required 100 foot front-yard setback.

15. On discussion of the potential impact of the proposed addition on adjacent properties, Mr. Booth testified that the addition is not visible from the street and the roof line of the addition is below the ridgeline of the existing dwelling. He explained that the addition is not visible from the north side of the adjacent property because it is screened by the previously approved addition to the dwelling. On questioning as to whether the addition could be located in a conforming location, Mr. Booth testified that it could not be so located given the location of the dwelling itself within the required front-yard setback.

16. On discussion of the proposed pool, Mr. Booth introduced into evidence, as **Exhibit A-3**, Sheet 5 of the plans, dated October 2, 2020. He explained that the Applicants designed the pool to disrupt as little of the Property as possible. Mr. Booth further explained that, as proposed, the pool is close to the family room and the kitchen, which are the most active locations. He testified that the Applicants had considered other locations, particularly the open lawn area to the southeast of the dwelling, but that the septic tanks and septic field are located in said area.

17. Mr. Booth introduced into evidence, as **Exhibit A-4**, a cross-section of the proposed pool and existing dwelling. He explained that the Applicants sought to balance the amount of cut and fill required so that they would not have to bring in additional material. He further explained

that there will be a 3 foot high retaining wall where the pool deck cuts into the existing grade. On discussion of the existing and proposed buffering, Mr. Booth testified the Applicants will install landscape buffering between the Property and Lot 17 to the north. He further testified that there are large trees to the east and rear of the lot. Mr. Booth opined that there is sufficient space available for the Applicants to plant an effective landscape buffer.

18. On questioning as to the topography of the Property, Mr. Booth introduced into evidence, as **Exhibit A-5**, the topographic information he received from the Township and described same in relation to the adjacent properties. He introduced into evidence, as **Exhibit A-6**, Sheet 6 of the plans consisting of a steep slope analysis. Referencing same, he described the existing landscape buffering which includes large trees with 40 to 50 foot canopies. Mr. Booth recognized that the larger trees do not provide buffering because they are tall, but noted that the Applicants can supplement the existing trees with evergreens having a height of 10 to 12 feet. On discussion of what type of plantings would provide the most effective buffer, the Applicant stipulated, as a condition of approval, to working with the Board Planner to determine the best species and locations and that said landscaping would be subject to his review and approval. The Applicants stipulated to complying with the balance of the comments and requirements set forth in Mr. Schley's Review Memorandum.

19. On discussion of the October 24, 2020 Review Memorandum prepared by the Environmental Commission, the Applicants stipulated to working with the Board Planner to come up with a pool water discharge plan; revising the plans to depict a double row of silt fencing, as well as construction details of such fencing; and to clarifying the amount of additional impervious coverage and land disturbance on the submission materials and plans, as well as complying with applicable stormwater management requirements.

20. On discussion of the December 2, 2020 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicants stipulated to revising the plans to depict the proposed fencing around the pool, as well as the pool equipment. The Applicants were informed that the proposed deck must have an open floorboard design to allow water to permeate its surface. The Applicants were further informed that they will be required to obtain certification from the Somerset-Union Soil Conservation District and may be required to provide additional grading information and wall details to the Township Engineering Department prior to the issuance of permits.

21. On questioning as to whether any additional lighting is proposed, the Applicants stipulated, as a condition of approval, to submitting a detailed lighting plan, same to be subject to the review and approval of the Township Engineering Department. Mr. Booth confirmed that any lighting would be downward directed or appropriately shielded to prevent glare or light spillage onto the adjacent properties and stipulated to same.

22. Eleanor Molloy, having an address of 164 Old Farm Road, was duly sworn according to law and expressed her opposition to the Applicants' proposal. Ms. Molloy introduced into evidence, as **Exhibit O-1**, a compendium of three photographs she had recently taken of her view of the Property. Ms. Molloy explained that she was not aware that landscaping plans had been submitted and, therefore, was not able to determine whether the proposed landscape buffering would be sufficient. She requested that the Applicants relocate the proposed pool to a conforming location. Mr. Booth noted that the Applicants had stipulated that the landscaping plan would be subject to the review and approval of the Board Planner and explained that a conforming location would put the pool very far from the dwelling and would require tree removal and the disturbance of steep slopes.

23. Marvin Aaron, having an address of 151 Old Farm Road, was duly sworn according

to law and expressed his support for the Applicants' proposal.

24. Christopher Molloy, having an address of 164 Old Farm Road, was duly sworn according to law and expressed concern about the proposed location of the pool and whether there would be sufficient landscaping to protect his privacy.

25. Jennifer Aaron, having an address of 151 Old Farm Road, was duly sworn according to law and expressed her support for the Applicants' proposal.

26. Maura Smith, having an address of 140 Old Farm Road, was duly sworn according to law and expressed her support for the Applicants' proposal.

27. On discussion of the proposed landscape buffering, Mr. Schley requested clarification as to what the Board is seeking to accomplish and was advised that the focus is to screen the view of the pool from the dwelling immediately adjacent to the north (Lot 17).

DECISION

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

29. As to the positive criteria for the "c(1)" or "hardship" variance for the requested setback and pool location deviations, 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 Property, particularly such that the entire dwelling is located within the required front-yard setback, as well as the location of

the adjacent dwellings and the existing septic tanks and septic field, and the existence of steep slopes. Here, the proposed pool is not to the rear of the adjoining dwelling on Lot 17 (164 Old Farm Road) to the northeast and Lot 15 (140 Old Farm Road) to the southwest. The proposed pool would have to be moved to the rear of the Property, the majority of which contains steep slopes and significant wooded areas, to comply with the pool location requirement and locating the pool in said location would result in additional disturbance, tree removal, and safety concerns due to limited visibility of the pool from the dwelling. 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.

30. 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.

31. As to the positive criteria for “c(2)” or “flexible c” variance relief for the front-yard setback and pool location deviations, 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 the proposed addition will not be visible from the right of way and will be screened by the dwelling itself. The Board further recognizes that locating the proposed pool in a conforming location would require the disturbance of steep slopes, removal of trees, and would generally restrict the Applicants' ability to monitor their children. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated conditions set forth below.

32. 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 recognizes that many of the adjacent neighboring properties are also improved with pools, that the pool will be sufficiently screened both by the existing and proposed landscaping, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. 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 deviations are relatively modest in nature and certainly do not rise to the level of constituting a rezoning of the Property.

33. 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 on December 9, 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 6th day of January, 2021, that the application of **DAVID COHEN and MITAL PATEL-COHEN**, 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 submit a tree protection plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (3) The Applicants shall submit a landscape plan, same to be subject to the review and approval of the Township Planner. If additional landscaping is recommended to provide sufficient buffering of the pool from adjacent Lot 17, the Applicants shall provide same in accordance with the reasonable requests of the Township Planner;
- (4) Soil from the pool excavation shall be removed from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (5) The Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans;
- (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 November 13, 2020 Review Memorandum of the Township Planner;
- (7) The Applicants are advised that the Township Engineering Department may require additional grading information prior to the issuance of a permit;

- (8) The Applicants shall construct the proposed deck with an open floor board design (i.e., slatted with gaps to allow water to permeate the deck) and same shall be reflected on the plans;
- (9) The Applicants shall revise the plans to depict the required fencing around the pool and the proposed pool equipment prior to submitting the plans to the Township Engineering Department for permits;
- (10) The Applicants shall revise the plans to depict a double row of silt fencing, as well as construction details of such fencing;
- (11) The Applicants shall clarify the amount of additional impervious coverage and land disturbance on the submission materials and plans and the Applicants shall address any necessary stormwater management requirements, same to be subject to the review and approval of the Township Engineering Department;
- (12) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (13) The exterior of the addition shall be consistent as to the architectural design, materials, and color of the balance of the exterior of the existing dwelling;
- (14) The Applicants are advised that any use of the Property as a home office must comply with the requirements applicable to "home offices (exempt)" as set forth in Subsection 21-10.4.a.1(g) of the Land Development Ordinance, unless approval for a home office conditional use is obtained from the appropriate land use board.
- (15) 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;
- (16) 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
- (17) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances 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, Kraus, 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 January 6, 2021.



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

Dated: January 6, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

MICHAEL RAYMOND and STACEY STAUB

Case No. ZB20-023

RESOLUTION

WHEREAS, **MICHAEL RAYMOND and STACEY STAUB** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variances in connection with the removal of an existing one-story dwelling and the construction of a new two-story dwelling with an attached three-car garage, located on property identified as Block 1104, Lot 17 on the Tax Map, more commonly known as 22 Monroe Place (the “Property”):

- (1) A variance for a pre-existing lot area of 31,823 square feet, whereas the minimum required lot area is 32,670 square feet in an R-6 (3/4 acre) Residential zone, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance;
- (2) A variance for pre-existing lot widths of approximately 129 feet along Monroe Place and 169.21 feet along Ellis Drive, whereas the minimum required lot widths for a corner lot are 150 feet and 187.5 feet in an R-6 (3/4 acre) Residential zone, 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 December 9, 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 undersized, irregularly shaped corner lot with frontage on Monroe Place and Ellis Drive. The lot area and lot widths were conforming until 1999, when the

minimum required lot area increased from 30,000 square feet to 32,670 square feet, and the minimum required lot widths for a corner lot increased from 125 feet and 156.25 feet, to 150 feet and 187.5 feet. The Property is currently improved with a one-story frame dwelling, wood deck, slate walk, and paved driveway.

3. The Board recognizes that the Applicants' property adjoins a total of three lots, all developed with dwellings. The lot to the northeast side and the lot to the southwest side are both undersized in lot area, such that it is not possible for the Applicants to purchase a portion of either lot in order to make their lot more conforming, without making the adjoining lot more nonconforming. Given that the lot to the rear is slightly oversized, it appears potentially feasible that the Applicants could acquire enough land, i.e. 848 square feet, from that lot to make the Applicants' lot conforming in lot area, however, such an acquisition would not necessarily provide any meaningful benefit to either of the properties, and would not have any impact on the Applicants' nonconforming lot width.

4. The Applicants propose to remove the existing one-story dwelling and to construct a new, 3,300 square foot two-story dwelling with an attached three-car garage.

5. The Applicants' proposal is depicted on Plot Plans prepared by James J. Mantz, P.E., P.L.S., dated May 8, 2020, last revised October 26, 2020, same consisting of two (2) sheets; Architectural Plans prepared by Richard Kyle Jr., R.A., dated October 26, 2020, unrevised, same consisting of five (5) sheets; and a Plan of Survey prepared by Daren C. Leeper, P.L.S., dated October 4, 2019, unrevised, same consisting of one (1) sheet. The Applicants also submitted a Wetlands Presence/Absence Assessment prepared by John Peel, P.P., of PK Environmental, dated November 10, 2020 and a compendium of four (4) photographs of the Property, same consisting of one (1) sheet.

6. The requested relief for the pre-existing nonconforming lot width and lot area deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

7. 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.

8. Michael Raymond, one of the Applicants, having an address of 66 Ramapo Drive, was duly sworn according to law. He testified that his lot is a corner lot located in the R-6 Zone and that he is seeking relief to raze the existing dwelling and to construct a new dwelling in its place. Mr. Raymond confirmed that the new dwelling would conform with all bulk requirements.

9. As to the November 13, 2020 Review Memorandum prepared by the Board Planner, Mr. Schley, Mr. Schley explained that the Property was conforming prior to 1999, when the lot area and lot width requirements were increased. Mr. Schley further explained that the Applicants could potentially obtain additional lot area from the lot located to the rear of the Property, but opined that same would not provide any benefits because doing so would result in two irregularly shaped lots with the rear lot becoming inconsistent with the neighborhood in which it is located. The Applicant stipulated, as a condition of approval, to complying with the comments and requirements set forth in Mr. Schley's Review Memorandum.

10. As to the December 3, 2020 Review Letter prepared by the Board's Engineer, Mr. Quinn, the Applicant stipulated to complying with the comments and requirements set forth therein. On discussion of the existing roadside swale and rip rap scour protection apron, Mr. Quinn noted that it appears the scour protection apron extends into the right-of-way. Mr. Raymond acknowledged same and stipulated to relocating the scour protection apron onto the Property and out of the right-of-way. As to the Review Letter prepared by the Environmental Commission, Mr. Raymond acknowledged that the Applicants will be near maximum permitted lot coverage and

that any future additions or impervious surface coverage features would likely require further Board approval because same would result in an exceedance of the maximum permitted coverage.

11. On discussion of whether the Applicants can reduce the amount of impervious coverage by removing the bump-out in the paved driveway, Mr. Raymond acknowledged that same would be possible. Mr. Schley suggested that same remain at the discretion of the Applicants. On questioning as to the photographs submitted with the application materials, Mr. Raymond testified that he had taken them approximately 1.5 months ago and he confirmed that they accurately depict the Property as it presently exists.

12. On questioning as to why the Applicants were razing the existing dwelling rather than renovating it, Mr. Raymond testified that the existing dwelling was constructed in the late 1950s and has patchwork plumbing and electric. He explained that support walls had been removed and that the footings of the dwelling might be compromised. Mr. Raymond further explained that it would likely be more costly to renovate the existing dwelling. On discussion of the design of the new dwelling, Mr. Raymond testified that the Applicants did not want to have the largest dwelling in the neighborhood and he opined that the proposed dwelling is consistent in size with other dwellings in the neighborhood. He further testified that the architectural design, materials and colors would also be consistent with the dwellings in the neighborhood.

13. On questioning as to whether the Applicants had spoken to their neighbors, Mr. Raymond advised that they had and that the neighbors were very supportive of the proposal, particularly given the condition of the existing dwelling after it was vacant due to foreclosure proceedings. He testified that he anticipated donating as much of the existing dwelling as possible, including kitchen cabinets, doors, siding, and windows. On discussion of whether the Fire

Department would be able to use the Property to conduct drills, Mr. Raymond stipulated to same provided the removal of many of the internal fixtures would not be prohibited.

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

DECISION

15. 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 lot width and lot area, under both N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

The c(1) Positive Criteria:

16. As to the positive criteria for “(c)(1)” or “undue hardship” variances, 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, as a result of unique conditions relating to the Property, to wit, the deficient lot area, the multiple frontages, and the location of the lawfully existing dwelling on the lot. The Board recognizes that the Applicants’ lot became nonconforming in 1999, when the minimum required lot area increased from 30,000 square feet to 32,670 square feet, and the minimum required lot widths for a corner lot increased from 125 feet and 156.25 feet, to 150 feet and 187.5 feet.

17. The Board finds that the Applicants have established that no additional immediately adjacent land is available for purchase which would bring the lot width and/or lot area into, or significantly closer to, conformity with the district standards of the Land Development Ordinance. Here, the Board recognizes that the Property adjoins a total of three lots, all of which are already developed. Both the lot to the northeast side and the lot to the southwest side are undersized in lot area, such that it is not possible for the Applicants to purchase a portion of either lot in order to

make the Property more conforming, without making the adjoining lots more nonconforming. The Board further recognizes that while the Applicants could purchase a portion of the lot to the rear of the Property, doing so would provide no benefits either to the Applicants or the lot to the rear because both lots would become irregularly shaped. The Board further finds that the hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title.

18. Based upon the foregoing, the Board finds that the Applicants has satisfied the positive criteria for c(1) variance relief for all of the requested zoning deviations.

The c(2) Positive Criteria:

19. As to the positive criteria for “(c)(2)” or “flexible c” variances, the Board finds that the proposed development will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. These benefits include providing a desirable visual environment, providing adequate light, air and open space, upgrading the housing stock, promoting the general welfare, and enhancing the visual compatibility of the Property with adjoining properties. In this regard, the Board recognizes that the proposed dwelling, as compared to the existing dwelling, will improve the appearance of the Property, and provide aesthetic and property value benefits to the neighborhood. As such, the Board finds that the benefits derived from the proposed development will substantially outweigh the relatively modest detriments associated with the variance relief sought, particularly given the conditions stipulated to by the Applicants.

20. Based upon the foregoing, the Board finds that the Applicants have satisfied the positive criteria for c(2) variance relief for all of the requested zoning deviations.

The Negative Criteria:

21. Finally, the Board finds that the Applicants have satisfied the negative criteria for the requisite variance relief. 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 considers that the Property has existed in the same condition for many years without issue, that the Applicants are not exacerbating the pre-existing nonconformities, and that the relatively modest detrimental impact is mitigated by the conditions stipulated to by the Applicants and set forth below. The Board further considers, in this regard, the lack of any public opposition to the proposal. As to the substantial impairment prong of the negative criteria, the Board recognizes that the proposed dwelling is a permitted use in the R-6 Zone. The Board further recognizes that granting the requested relief certainly will not result in a rezoning of the Property. As such, the Board finds that the Applicants have satisfied the negative criteria.

WHEREAS, the Board took action on this application at its meeting on December 9, 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 6th day of January, 2021, that the application of **MICHAEL RAYMOND and STACEY STAUB** 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 make the Property available to the Basking Ridge Fire Company in the event they wish to run drills on the site, with notice given to the

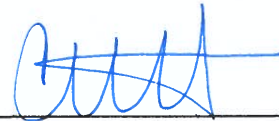
- Fire Company at least 30 days prior to the demolition date of the existing dwelling;
3. The Applicants shall revise the plans to provide the correct lot area, as specified on the survey;
 4. The Applicants shall revise the plot plan to include the source of the topographic information;
 5. The Applicants shall revise the plot plan to relocate the proposed rip rap scour protection apron onto the Property and out of the right-of-way, same to be subject to the review and approval of the Township Engineering Department;
 6. The wing wall proposed at the front/southerly corner of the garage (shown on the architectural plans) shall be eliminated or revised to comply with Section 21-16.2.a, which requires that walls located in a front yard must be at least 50% open;
 7. All utility services shall be underground and routed to minimize disturbance to existing trees;
 8. An engineering permit must be obtained prior to any work within the Monroe Place or Ellis Drive rights-of-way;
 9. A completed Township standard lot coverage disclosure form shall be submitted prior to issuance of a construction permit;
 10. A development fee shall be required in accordance with §21-86.
 11. The Applicants shall submit a tree protection, removal, and replacement plan and same shall be subject to the review and approval of the Township Engineering Department;
 12. The Applicants shall obtain certification from the Somerset-Union Soil Conservation District;
 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 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
 15. 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

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 January 6, 2021.



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

Dated: January 6, 2021