

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v2
Regular Meeting
February 3, 2021

CALL TO ORDER

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

FLAG SALUTE

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

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin Board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk, all on January 7, 2021 and was electronically mailed to all those people who have requested individual notice.

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

ROLL CALL:

Members Present: Agarwal, Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: NONE
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Sam Koutsouris, PE; Board Secretary, Cyndi Kiefer

APPROVAL OF MINUTES

January 6, 2021 – Regular Session – On motion by Mr. Kraus, seconded by Ms. Genirs, all eligible in favor and carried, the minutes were adopted as drafted.

January 6, 2021 – Reorganization Session – On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF RESOLUTIONS

Reilly, Peter & Bernadette; Block 5701, Lot 47; 48 Lyons Place; Bulk Variance; ZB20-024 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Genirs seconded.

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

Motion carried.

Khoshaba, Ursula; Block 302, Lot 4; 44 Old Farm Road; Bulk Variances; ZB20-025 (approved) – Ms. Genirs moved approval of the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

RESOLUTION OF DISMISSAL

Keith, John D. & Gloria E./Keith Living Trust; Block 4101, Lot 12; 34 Eton Place; ZB20-026 (dismissed without prejudice)

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

Motion carried.

Chairman Breslin recused himself and left the room.

COMPLETENESS HEARING

Verizon Corporate Services Group Inc.; Block 803, Lots 2, 3, 5, 6, 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Variances, Design Exceptions; ZB21-001

Present: Peter A. Chacanas, Esq., Attorney for the Applicant

Peter A. Chacanas, Esq., attorney with the firm of *Wilentz, Goldman & Spitzer, PA*, Woodbridge, NJ, entered his appearance on behalf of the Applicant. He gave a brief overview of the application and advised that the Applicant was requesting two (2) submission waivers: a Letter of Interpretation (LOI) issued by the New Jersey Department of Environmental Protection and profiles of the proposed storm sewers. He explained that the Applicant expected to receive the LOI shortly since the application had already been submitted and that the Board Engineer agreed that because the project would have minimal impact on the storm sewer system, the profile submission could be waived.

Mr. Schley stated that waiving these items for completeness purposes does not preclude the Board from asking for them during the hearing if they become material.

A public hearing date of 03/11/2021 was confirmed.

Mr. Tancredi moved to grant the submission waiver requests and to deem the application complete. Mr. Cambria seconded.

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

Motion carried.

Chairman Breslin returned to the dais.

COMPLETENESS HEARING

Braemar Partners; Block 8201, Lots 22, & 23; 3066-3074 Valley Road; Preliminary/Final Major Site Plan, D-3 Conditional Use Variance, Bulk Variances; ZB20-027

Present: Jeffrey Lehrer, Esq., Attorney for the Applicant

Jeffrey Lehrer, Esq., attorney with the firm of *DiFrancisco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC*, Warren, NJ, entered his appearance on behalf of the Applicant. He gave a brief overview of the application and advised that the Applicant was requesting two (2) submission waivers: a Letter of Interpretation (LOI) issued by the New Jersey Department of Environmental Protection and profiles of the utility layouts and proposed driveway. He explained that the Applicant had submitted an application for the LOI and anticipated receipt of same shortly. Mr. Koutsouris saw no issue with granting the remaining waiver requests.

Mr. Schley stated that waiving these items for completeness purposes does not preclude the Board from asking for them during the hearing if they become material.

A public hearing date of 04/07/2021 was confirmed and Mr. Lehrer agreed to supply an Extension of Time to Act through May 31, 2021.

Ms. Pochtar moved to grant the submission waiver requests and to deem the application complete. Mr. Cambria seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Rossi, Patrick & Nesa; Block 2701, Lot 3; 14 Culberson Road; Bulk Variances; ZB21-003

Present: Patrick & Nesa Rossi, Applicants

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

Nesa Rossi, Applicant residing at 14 Culberson Road, explained that the proposed project, construction of an in-ground swimming pool, spa, patio and pavilion/pool house, requires relief for maximum lot coverage along with maximum fence height in a side/rear yard and minimum fence setback from any property line for an existing fence. She testified that the fence had been installed by the previous owners and that there had been no complaints that she was aware of. She also stated that she had taken the photos submitted with the application sometime in January. Referring to a comment in Mr. Schley's memo dated 01/28/2021, she confirmed that the increase in impervious coverage would have to be adjusted upward to accommodate the pool equipment pad.

Chairman Breslin asked the Applicants if any proposed or existing coverage could be reduced or eliminated to lessen the increase in impervious coverage. Ms. Rossi responded that they had concluded that any possible revisions would not result in a meaningful reduction. She confirmed that there would not be a walkway to the pool and testified that she had not experienced any issues with stormwater runoff. Finally, she stated that she had heard no negative comments from the neighbors about the proposed project.

Ms. Rossi stipulated, as a condition of approval, that no trees would be removed and that, when the existing fence is replaced, the new fence would be conforming in both height and location. She also stipulated that there would be no kitchen or living facilities in the proposed pavilion.

The Applicants stipulated, as conditions of approval, to the comments made in Mr. Quinn's memo dated 01/28/2021 and in Mr. Schley's memo dated 01/28/2021. Comments in the Environmental Commission's memo dated 01/26/2021 were also addressed.

In response to a question from Chairman Breslin regarding buffering, Mr. Rossi felt that there is adequate existing vegetation, so no additional landscaping is proposed.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions or comments.

James Molnar, 141 Spencer Road, was duly sworn and stated that although there is a significant amount of vegetative screening around the property, it is thinner in some areas between his property and the subject property. The Applicants stipulated, as a condition of approval, to providing additional buffering in those areas subject to the approval of the Township/Board Planner, Mr. Schley.

Mr. Molnar added that he had no objection to the existing fence height since the fence itself is barely visible.

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

Finally, the Applicants stipulated, as conditions of approval that the pavilion would be substantially similar in architectural style, color and materials used to the existing dwelling and that the dimensions of the pavilion would not exceed what is currently proposed.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions or comments.

Mr. Molnar reiterated his request for additional landscaping. Hearing nothing further, that portion of the hearing was closed.

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

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

Motion carried.

** * * The Open Session was recessed at 9:15 PM and reconvened at 9:22 PM. * * **

COMPLETENESS AND PUBLIC HEARING

Maschhoff, Andrew & Anita; Block 3704, Lot 1.06; 31 Clairvaux Court; Bulk Variances; ZB21-004

Present: Larry Butynski, CLA, Landscape Architect for the Applicants
Anita Maschhoff, Applicant

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

Anita Maschhoff, Applicant residing at 31 Clairvaux Court, testified that the proposed project, construction of an in-ground pool and adjoining patio/walkway to the rear of the existing dwelling, necessitates relief from the ordinance requiring that pools be constructed behind the rear building line of adjacent residential structures on adjoining lots and for exceeding the maximum allowable impervious coverage. In addition to the pool, an existing open deck is to be replaced (remaining open) and an existing retaining wall is to be replaced with two boulder retaining walls. Both the deck and the retaining walls are conforming as proposed.

Larry Butynski, CLA, registered landscape architect with the firm of *Cross River Design*, Annandale, NJ, was accepted by the Board as an expert in the field of landscape architecture. He testified that he had taken the photos submitted with the application and that they accurately depict the property as it currently exists. He stated that there is a conforming location on the subject property for the pool however many mature trees in that area that would have to be removed. In the proposed location, some trees would still have to be removed however they are of lesser quality than those in the conforming location. He also opined that because the proposed location, which is closer to the existing dwelling, is safer for young children, offers more privacy for the neighboring properties and requires less grading and overall land disturbance, it represents a better planning alternative.

Referring to Mr. Schley's memo dated 01/28/2021, Mr. Butynski discussed the existing and proposed landscape buffering along the perimeter of the property. He added that by using decking and stepping-stones, the Applicants sought to minimize the increase in impervious coverage. Mr. Butynski stipulated, as conditions of approval to all applicable comments made in Mr. Schley's memo.

Referring to Mr. Quinn's memo dated 01/28/2021, it was noted that the square footage of the retaining walls had been included in the total increase in impervious coverage. He stated that even though the project would fall below the threshold triggering stormwater mitigation once the square footage of the retaining walls and pool water surface were subtracted out, the Applicants are still providing stormwater infiltration measures.

The Environmental Commission's memo dated 01/26/2021 was addressed.

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.

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

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

Motion carried.

COMMENTS FROM MEMBERS OR STAFF

The special meeting scheduled for February 11, 2021 was cancelled.

ADJOURN

By unanimous Voice Vote, all eligible in favor and carried, the meeting was adjourned at 10:13 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 03-03-2021

02/24/2021 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**PETER and BERNADETTE REILLY
Case No. ZB20-024**

RESOLUTION

WHEREAS, **PETER and BERNADETTE REILLY** (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 a 19 foot by 39 foot inground swimming pool/spa with adjoining patio to the rear of the existing dwelling located on property identified as Block 5701, Lot 47 on the Tax Map, more commonly known as 48 Lyons Place (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 January 6, 2021, 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-4 (one acre) Residential Zone and consists of 1.58 acres. The Property is a narrow lot (178.8 feet wide; 200 feet required) fronting on Lyons Place. It is presently improved with a two-story dwelling, wood deck, patio, walkways, and asphalt driveway with curbing.
3. The Applicants propose to construct an approximately 19 foot by 39 foot (741 square foot) inground swimming pool/spa with adjoining patio to the rear of the existing dwelling.

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 12.01 to the north (58 Lyons Place) because the dwelling thereon is angled toward the Property. Given the location of Lot 12.01 such that it is located along the approximately 70° bend in Lyons Place, there is no conforming location in which the pool can be located on the Property.

4. The Applicants’ proposal is depicted on Engineering plans prepared by Angelo Onello, III, P.E., dated October 29, 2020, last revised November 19, 2020, same consisting of six (6) sheets and a Partial Topographic Plan prepared by Daniel E. Parker, P.L.S., dated July 14, 2020, last revised October 12, 2020, same consisting of one (1) sheet.

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. Peter and Bernadette Reilly, the Applicants, having an address of 48 Lyons Place, were duly sworn according to law. Mr. Reilly explained that the Applicants are seeking approval to construct an inground pool that is not located behind the rear building line of the adjacent dwelling located on Lot 12.01.

8. Ms. Reilly introduced into evidence, as Exhibit A-1, a compendium of four (4) photographs of the adjacent properties as viewed from the Property. She further introduced, as Exhibit A-2, a diagram explaining the location of the proposed pool as it relates to the adjacent dwelling on Lot 12.01 (the Gibson Farm). Ms. Reilly testified that she had taken the photographs included in Exhibit A-1 on November 16, 2020, and confirmed that the photographs constitute an

accurate depiction of the Property as it presently exists.

9. On questioning as to the existing landscaping, Mr. Reilly testified that their lot is adjacent to the Gibson Farm (Lot 12.01) and that there is a significant amount of ornamental grass and decorative rocks, such that it is difficult to see the dwelling located on said lot. He further testified that both the Applicants and the owner of adjacent Lot 12.01 have planted trees along their respective property lines, and he noted that there is also a farm lane between the dwelling on Lot 12.01 and the Property. Ms. Reilly advised that there are also a number of trees between the proposed pool and the adjacent property located at 42 Lyons Place, which is owned by the Menzas.

10. On questioning as to whether any additional lighting is proposed, Mr. Reilly testified that there is lighting inside the pool and that there is an existing spot light directed onto the walkout basement. He confirmed that no additional lighting is proposed. On questioning as to whether tree removal would be required, Mr. Reilly advised that same will not be necessary. The Applicants stipulated to the balance of the conditions set forth in the December 31, 2020 Review Memorandum prepared by the Board Planner, Mr. Schley.

11. On discussion of the January 4, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicants stipulated to the requirements set forth therein. On discussion of the proposed boulder retaining wall, Mr. Quinn advised that the use of irregularly shaped boulders presents a highly subjective and variable wall construction and he requested that the Applicants revise the plans to include a note that the design engineer will provide a certification of the stability of the retaining wall post-construction, and the Applicants stipulated to same.

12. On discussion of the December 28, 2020 Review Letter prepared by the Township Environmental Commission, the Applicants were advised that any modifications of the proposal that would increase the amount of impervious coverage above the maximum allowable coverage

of 15% would require the Applicants to return to the Board for approval.

13. On questioning regarding whether the Applicants had spoken to their adjacent neighbors, Ms. Reilly advised that they had spoken to them and that none of them expressed concern, but rather they expressed that they support the Applicants' proposal.

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

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 as to the pool location under N.J.S.A. 40:55D-70(c)(1).

16. As to the positive criteria for the "c(1)" or "hardship" variance for the pool location, the Board finds that, by reason of exceptional 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 the configuration of the existing lots/dwellings. Here, the proposed pool is not to the rear of the adjoining dwelling on Lot 12.01 (58 Lyons Place) to the north. The Board recognizes that there is no conforming location in which the pool can be located because adjacent Lot 12.01 is located along the approximately 70° bend in Lyons Place, such that the dwelling thereon faces the Applicants' dwelling. Therefore, the Board finds that the Applicants have demonstrated that the requested variance relief from such strict application of the regulations is warranted so as to relieve the Applicants from such exceptional difficulties or undue hardship.

17. 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 particularly since there is no alternative conforming location in which the pool could be located. 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.

18. As to the negative criteria required for variance relief pursuant to subsection c(1), 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 by the existing 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, pursuant to N.J.S.A. 40:55D-70(c)(1).

WHEREAS, the Board took action on this application at its meeting on January 6, 2021,

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 3rd of February, 2021, that the application of **PETER and BERNADETTE REILLY**, 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) Any lighting in the pool area shall be downward directed or appropriately shielded and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (3) The Applicants shall protect the existing trees during construction. If the Applicants determine that trees must be removed, 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;
- (4) The Applicants shall remove the soil from the pool excavation from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (5) The Applicants shall obtain approval from the Somerset-Union Soil Conservation District. The Applicants shall revise the plans to include a note stating the Soil Conservation District certification shall be obtained prior to any construction activities;
- (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 December 31, 2020 Review Memorandum of the Township Planner;
- (7) The Applicants' engineer shall review the areas between the dwelling and pool that appear to represent a minimum of 2% land grading which is not supported by the spot grades, and shall revise the plan as necessary to ensure that same is accurate;
- (8) The Applicants' engineer shall review the detail sheet of the plan, including the

details of a patio perimeter drain and a stone riprap apron detail as the development plan does not appear to depict these improvements, and shall revise the plan as necessary to ensure that same is accurate, and same shall be subject to the review and approval of the Township Engineering Department;

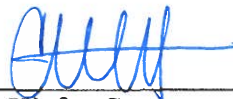
- (9) The Applicants shall revise the plans to include a note that the design engineer shall provide a certification of the stability of the proposed boulder retaining wall post-construction and same shall be subject to the review and approval of the Township Engineering Department;
- (10) In the event the proposed land disturbance necessitates changes to the existing drywells or related pipes, any such changes shall be subject to the review and approval of the Township Engineering Department;
- (11) 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;
- (12) 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
- (13) 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, Baumann, Cambria, Genirs, Kraus, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of February 3, 2021.



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

Dated: February 3 2021.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**URSULA KHOSHABA
Case No. ZB20-025**

RESOLUTION

WHEREAS, **URSULA KHOSHABA** (the “Applicant”) has 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) an approximately 20 foot by 40 foot inground swimming pool with attached approximately 8 foot by 8 foot spa and surrounding patio adjoining the existing patio areas, and (2) an approximately 18 foot by 18.5 foot pavilion with attached approximately 18 foot by 16 foot pergola on an existing patio, all located in the rear yard of property identified as Block 302, Lot 5 on the Tax Map, more commonly known as 44 Old Farm Road (the “Property”):

1. A variance for a proposed distance of 8.5 feet between the pavilion/pergola and the existing dwelling, whereas the minimum required distance between buildings is 10 feet, pursuant to Section 21.16.1.c and Table 507 of the Land Development Ordinance (the “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 Ordinance; and

WHEREAS, a public hearing on notice was held on such application on January 6, 2021, 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 to be complete.

2. The Property is located in the R-1 (3 acre) Residential Zone and consists of 3.33 acres. It is an irregularly shaped, narrow (230.4 feet wide; 250 feet width required) lot with frontage on Old Farm Road. The Property is presently improved with a two-story, single-family residential dwelling, slate patio, hot tub, fire pit, outdoor kitchen, generator and associated slate walkways and a macadam driveway.

3. The Applicant proposes to construct (1) an approximately 20 foot by 40 foot inground swimming pool with attached approximately 8 foot by 8 foot spa (total 924 square feet) and surrounding patio adjoining the existing patio areas and (2) an approximately 18 foot by 18.5 foot pavilion (approximately 333 square feet) with attached approximately 18 foot by 16 foot pergola (approximately 288 square feet) on an existing patio. The proposed pavilion has a gable roof to provide solid cover above an existing outdoor kitchen, and the pergola has an open overhead frame that will be above an existing outdoor dining area.

4. 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 7 (30 Old Farm Road), which is located to the south/southeast (front) of the Property. The dwelling on Lot 7, as well as the dwelling on adjacent Lot 6, are accessed from Old Farm Road by way of a private driveway easement that runs along the front of the Property. The dwellings on adjacent Lots 6 and 7 are oriented toward the driveway easement such that the front of the dwelling on Lot 7 faces the Property (as opposed to Old Farm Road). Given the orientation of the dwelling on Lot 7, there is no conforming location in which the pool can be located on the Property.

5. The Applicant’s proposal is depicted on Plans prepared by David E. Fantina, P.E.,

dated September 10, 2020, last revised October 14, 2020, same consisting of four (4) sheets; a Pool Location Exhibit also prepared by Mr. Fantina, dated December 11, 2020; and a Conceptual Pool and Hardscape Plan prepared by Joseph H. Polacek, L.L.A., dated July 24, 2020, unrevised, same consisting of one (1) sheet. The Applicant also submitted a Survey prepared by John C. Ritt, P.L.S., dated October 29, 2017, unrevised, same consisting of one (1) sheet and a Wetlands/Transition Area Investigation prepared by David C. Krueger of Environmental Technology Inc., dated November 7, 2020.

6. The requested variance relief is 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. Frederick B. Zelley, Esq., of Bisogno, Loeffler & Zelley, LLC, entered his appearance on behalf of the Applicant. He explained that the Applicant is seeking variance relief for the location of the proposed pool, as well as for an insufficient distance between the existing dwelling and the adjacent pavilion/ pergola. Mr. Zelley contended that there is no conforming location in which the pool can be located given the orientation and location of the adjacent dwelling. He further contended that the distance between the dwelling and the pavilion/ pergola cannot be increased because the pavilion/ pergola is positioned above an existing outdoor kitchen and associated improvements, which are permanent structures, and moving them would result in an undue hardship upon the Applicant. Mr. Zelley advised that the proposed improvements would not be visible from the right-of-way given the existing dwelling and landscape buffering.

9. Ursula Khoshaba, the Applicant, having an address of 44 Old Farm Road, was duly sworn according to law. She testified that she presently resides at the Property with her son. Ms. Khoshaba introduced into evidence, as Exhibit A-1, a compendium of eleven (11) renderings of

the proposed improvements. Referencing Exhibit A-1, she described the existing improvements, including an outdoor kitchen/cooking island and fire pit, as well as the proposed improvements. Ms. Khoshaba confirmed that the improvements are entirely for her personal enjoyment. On questioning as to whether the trees shown in the renderings reflect current conditions, she confirmed that they did and noted that, given the landscaping, the proposed improvements will not be visible to any of the adjacent properties. Ms. Khoshaba testified that she enjoys gardening and will likely install additional flowers and smaller trees, as well. On questioning, she further testified that both the pergola and pavilion areas will remain open (i.e., no walls are proposed).

10. Ms. Khoshaba testified that the outdoor kitchen/cooking island and fire pit are permanent structures that cannot be easily relocated. On questioning as to the height of the pavilion, she further testified that the height would be approximately 15 feet and stipulated that the height would not exceed 20 feet. Ms. Khoshaba explained that the existing spa will be removed and stipulated to same. On questioning as to whether she had discussed the proposal with her neighbors, Ms. Khoshaba advised that she had and noted that all of the adjacent properties have swimming pools.

11. David E. Fantina, P.E., having an address of 15 Sunset Drive, Bernardsville, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Mr. Fantina provided an overview of the Property and the existing improvements. He opined that, given the existing landscaping, the proposed improvements will be almost invisible to the adjacent neighbors. On questioning, Mr. Fantina confirmed that the Applicant does not propose to remove any trees.

12. Mr. Fantina confirmed that the Property is not encumbered by an wetlands, wetland transition areas, or regulated waters. He noted that there is a stream, but that it is a few hundred

feet away. On discussion of the scope of the project, Mr. Fantina opined that the pool will be consistent not only with the existing improvements on the Property, but also with the existing neighborhood, particularly since all of the other neighboring properties also have pools. Mr. Fantina confirmed that the Applicant is not proposing to construct any walls and that the pavilion, pergola, and pool area will remain open.

13. On discussion of the proposed stormwater management measures, Mr. Fantina described the proposed drywell system. However, on discussion of the January 5, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, Mr. Fantina was advised that additional stormwater management measures, such as the proposed drywell system, are not necessary. Mr. Quinn explained that, while the pool surface is considered impervious coverage for zoning compliance purposes, it is not effectively considered in the stormwater management threshold for minor developments and, therefore, the effective impervious cover area of 813 square feet is considered below the 1,000 square foot floor that triggers the need for stormwater management design. Mr. Fantina, on behalf of the Applicant, stipulated, as a condition of approval, to complying with the balance of the comments and requirements set forth in Mr. Quinn's Review Letter.

14. As to the December 28, 2020 Review Memorandum prepared by the Board Planner, Mr. Schley, the Applicant stipulated, as a condition of approval, to complying with the recommendations and requirements set forth therein. On discussion of the pool equipment location, which is not shown on the plans, Mr. Fantina advised that same will be located in a conforming location. As to the December 28, 2020 Review Memorandum from the Township Environmental Commission, the Applicant stipulated, as a condition of approval, to using the best management practices available when discharging pool water.

15. On questioning as to the photographs submitted with the application materials, Ms.

Khoshaba testified that she and Mr. Zellely took the photographs recently and confirmed that they constitute an accurate depiction of the Property as it presently exists.

16. No member of the public commented on, or objected to, the Applicant's proposal.

DECISION

17. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied her burden of proving an entitlement to the requested variance relief as to the pool location and deficient distance between the dwelling and the pavilion/pergola under N.J.S.A. 40:55D-70(c)(1).

18. As to the positive criteria for the "c(1)" or "hardship" variance for the pool location and the deficient distance between the dwelling and pavilion/pergola, 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 Applicant. 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 7 (30 Old Farm Road), which is located to the south/southeast (front) of the Applicant's dwelling. Additionally, the dwellings on adjacent Lots 6 and 7 are accessed from Old Farm Road by way of a private driveway easement that runs along the front of the Property and said dwellings face the easement, rather than Old Farm Road, such that there is no conforming pool location on the Property. As to the location of the pavilion/pergola such that it is not 10 feet from the existing dwelling, the Board finds that relocating the pavilion/pergola would require the Applicant to remove and then relocate the existing improvements, which include an outdoor kitchen and a stone firepit. Therefore, the Board determines that the requested variance from such strict application of

the regulations is warranted so as to relieve the Applicant from such exceptional difficulties or undue hardship.

19. 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 Applicant to comply with the pool location requirement would not serve the intent of the pool location ordinance, particularly given the location and orientation of the existing neighboring dwellings. 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 Applicant or any predecessor-in-title.

20. As to the negative criteria required for variance relief pursuant to subsections c(1), 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 zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicant has 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 Applicant has demonstrated through the unrefuted expert testimony of the Applicant’s professional engineer, that the pool will be sufficiently screened both by the existing dwelling and 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 Applicant has demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools are permitted accessory structures, as are pavilions/pergolas. 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.

21. Based upon the foregoing, the Board finds that the Applicant has demonstrated both the positive and negative criteria for the requested bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(1).

WHEREAS, the Board took action on this application at its meeting on January 6, 2021, 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 3rd day of February, 2021, that the application of **URSULA KHOSHABA**, 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) 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;
- (3) If the Conceptual Pool and Hardscape Plan (Sheet C1.0) is submitted with the Applicant's construction permit application, it shall be revised to be consistent with the variance/grading plans (Sheets 1 through 4);
- (4) The roof peak of the proposed pavilion shall not exceed the maximum permitted height of 20 feet;
- (5) The Applicants shall protect the existing trees during construction. If the Applicants determine that trees must be removed, 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;
- (6) The Applicant shall revise the plans to delineate the stream buffer conservation area and same shall be contained within a stream buffer conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, executed by the Applicant, and recorded with the Somerset County

Clerk prior to issuance of a construction permit;

- (7) Soil from the pool excavation shall be removed from the Property unless the Applicant submits a grading plan showing where the soil will be used on the Property, and same shall be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (8) The Applicant shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission attached to the December 28, 2020 Review Memorandum of the Township Planner;

(9)

The existing spa/hot tub shall be removed prior to issuance of a certificate of occupancy/approval for the swimming pool.

- (10) The Applicant is advised that the engineering plans are very cursory in nature and are lacking details that will be required to obtain a permit. Specifically, there is no pool safety fence shown, nor any area for pool equipment. Grading detail is required to ensure the proper flow of water around the proposed improvements. The engineering plans depict a proposed garden wall along the rear of the pool patio, but no information is provided for this wall. Additional information may also be required with regard to the proposed pergola. To the extent additional information is required, the Applicant shall provide same to the Township Engineering Department;
- (11) The Applicant shall revise the plans to include a note that the proposed limit of disturbance is 7,497 square feet and, therefore, the Applicant shall obtain certification from the Soil Conservation District prior to issuance of a construction permit;
- (12) The Applicant shall construct the proposed gable roof of the pergola such that it is consistent in architectural design, materials, and color of the existing roof on the dwelling;
- (13) The pavilion and pergola areas shall remain open (i.e., not enclosed by walls);
- (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 Applicant 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, Baumann, Cambria, Genirs, Kraus, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of February 3, 2021.



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

Dated: February 3, 2021.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**JOHN D. KEITH & GLORIA E. KEITH LIVING TRUST DATED 1/4/2008
Case No. ZB20-026**

RESOLUTION – WITHDRAWAL

WHEREAS, the **JOHN D. KEITH & GLORIA E. KEITH LIVING TRUST DATED 1/4/2008** (the “Applicant”) proposed to construct a pergola on an existing patio located on property designated as Block 4101, Lot 12, on the Township Tax Map, more commonly known as 34 Eton Place; and

WHEREAS, the application, having been deemed complete, was scheduled for a public hearing on February 3, 2021; and

WHEREAS, by e-mail dated January 12, 2021, John Keith, on behalf of the Applicant, requested that the application be withdrawn without prejudice; and

WHEREAS, the Rules and Regulations of the Board provides, at Rule 2:4-7, that “any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed without prejudice”; and

WHEREAS, the Board Attorney advised the Board that applicable case law, specifically the decision in Sansone Oldsmobile-Cadillac, Inc. v. Shrewsbury Borough Bd. of Adj., 211 N.J. Super. 304 (Law Div. 1986), provides that, where, as here, an applicant seeks to withdraw a pending application before a zoning board of adjustment without prejudice, the principles of N.J. Court Rule 4:37-1(b) should be applied, such that a request to grant a voluntary dismissal without prejudice during the pendency of an application is within the discretion of the Board and the Board may impose reasonable terms and conditions; and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 3rd day of February, 2021, that the request by the Applicant, for voluntary dismissal without prejudice of its application, as aforesaid, be granted, subject to the following condition:

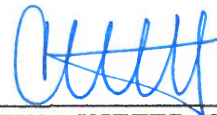
The Applicant shall post funds with the Township sufficient to satisfy any and all deficiencies in the Applicant's escrow account and shall remain obligated to replenish that escrow account and otherwise reimburse the Township for all expenses incurred by it and its professionals in connection with the application.

ROLL CALL VOTE:

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

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on February 3, 2021.



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

Dated: February 3, 2021