

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v2
Regular Meeting
June 9, 2021

CALL TO ORDER

Chairman Breslin called the meeting to order at 7:36 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, Kraus, Tancredi
Members Absent: Genirs, Pavlosky, Pochtar
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

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

APPROVAL OF MINUTES

May 13, 2021 – Special Session – On motion by Mr. Kraus, seconded by Ms. Baumann, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF RESOLUTIONS

Vial, Louis & Nellie; Block 2004, Lot 2; 10 Brook Avenue; ZB21-008 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Baumann seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Kraus, Tancredi
Nay: NONE
Abstain: Agarwal (absent)
Motion carried.

Simao, Salvador & Sofia; Block 4301, Lot 67.02; 20 Canoe Brook Lane; ZB21-009 (approved) - Ms. Baumann moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Kraus, Tancredi
Nay: NONE
Abstain: Agarwal (absent)
Motion carried.

Sefchovich, P./Bonilla, T.; Block 4802, Lot 1.03; 91 Queen Anne Drive; ZB21-010 (approved) - Mr. Kraus moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Kraus, Tancredi
Nay: NONE
Abstain: Agarwal (absent)

Motion carried.

[Lesnik, Howard & Keri](#); Block 1803, Lot 1; 6 Cedar Street; ZB21-011 (approved) - Ms. Baumann moved approval of the resolution as drafted. Mr. Cambria seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Kraus, Tancredi
Nay: NONE
Abstain: Agarwal (absent)

Motion carried.

[Calvert, Caeleigh B.](#); Block 603, Lot 12; 19 Fieldstone Drive; ZB21-020 (approved) - Ms. Baumann moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Kraus, Tancredi
Nay: NONE
Abstain: Agarwal (absent)

Motion carried.

[Braemar Partners](#); Block 8201, Lots 22, & 23; 3066-3074 Valley Road; ZB20-027 (approved) - Mr. Kraus moved approval of the resolution as drafted. Mr. Cambria seconded.

Roll call: Aye: Breslin, Cambria, Kraus
Nay: NONE
Abstain: Agarwal (absent), Baumann, Tancredi (ineligible)

Motion carried.

COMPLETENESS AND PUBLIC HEARING

RCP Realty Associates LLC; Block 3901, Lot 5, 31 Country Lane; Bulk Variances; ZB21-007

Present: Frederick B. Zelle, Esq., Attorney for the Applicants
William S. Hocking, Beverly Saadeh, Applicants
John James, RA, Architect for the Applicants

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler and Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He stated that RCP Realty Associates LLC, owned in part by William S. Hocking and Beverly Saadeh, had purchased the subject property and seeks to raze the existing structure and build a new single family dwelling for sale to another party. Adding that two zoning ordinance changes had rendered the subject property non-conforming, he explained that this project requires several bulk variances. Finally, he explained that because Country Lane is a private road, the subject property does not front on a public street requiring a variance from provisions of the Township Land Development Ordinance and the Municipal Land Use Law.

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

William S. Hocking, residing at 30 Country Lane (across the street from the subject property), described the existing house as unoccupied and uninhabitable. He testified that although consideration was given to restoration, ultimately it was decided that it would be impossible due to the extent of deterioration. He further stated that the new dwelling would have a second floor and would be constructed in almost the same footprint as the existing house.

Responding to a question about the efficacy and maintenance of the Country Lane, Mr. Hocking testified that it is wide enough for two (2) cars to pass each other and that there have been no issues for emergency vehicles. He added that there is gas and sewer in the road but not public water. The Country Lane Association, an informal alliance of homeowners on the street, is responsible for snow removal and periodic regrading since it is a gravel

road. A discussion ensued about either formalizing the association or dedicating the road to the Township and as a result, Mr. Hocking stipulated to disclosing the road maintenance responsibilities to the new homeowner.

Mr. Hocking testified that he had taken the pictures that were submitted with the application within the last year and that they accurately depict the property as it currently exists. He then stipulated to all the applicable comments in memos from Mr. Schley (06/02/2021) and Mr. Quinn (06/07/2021).

Mr. Zelle added that his office had sent out "buy-sell" letters in an attempt to acquire land from adjoining property owners to make the subject lot more conforming or to sell the undersized lot to those adjoining property owners.

The hearing was opened to the public for questions of this witness. Hearing none, the hearing was closed.

John James, RA, architect with a business address of Maplewood, NJ, was accepted by the Board as an expert in the field of architecture and concurred with Mr. Hocking's assessment of the dilapidated condition of the existing house. After describing the floor plans of the proposed dwelling, he testified that the footprint had been expanded slightly but not in the direction of the wetlands and that the house was designed to harmonize with the neighborhood both in architecture and materials used. Finally, he stipulated to the applicable comments made in both Mr. Schley's and Mr. Quinn's memos.

Mr. James addressed a comment in the Environmental Commission's memo (04/28/2021) concerning unnecessary removal of some trees by stating that the trees in question are located very close to the house and that many existing trees would remain on the heavily wooded lot. Mr. Schley noted that the Applicant had stipulated to submitting a tree protection, removal, and replacement plan for review and approval by the Township Engineering Department prior to any land disturbance.

Mr. Quinn advised the Applicant that if a final "as-built" shows that the total additional impervious coverage exceeds the stormwater recharge requirements threshold, a dry well will have to be installed.

In reference to a comment in Mr. Schley's memo pertaining to offering the house to the fire company for drills, Mr. James opined that the structure is so dilapidated that it would be dangerous for anyone to enter the building and the comment was struck.

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

Mr. Zelle summarized the testimony provided to satisfy both the positive and negative criteria required for variance approval.

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

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Colucci, Adam D.; Block 7002, Lot 42; 373 Lyons Road; Bulk Variances; ZB21-013

Present:	Adam D. Colucci, Applicant
	Elizabeth Shirley

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

Adam D. Colucci, Applicant residing at 373 Lyons Road, testified that the proposed project, construction of an in-ground pool and surrounding patio, requires relief for pool location (not to the rear building line of the adjacent dwelling on Lot 41) and for steep slope (greater than 25%) disturbance. He explained that he had begun to grade out the steep slopes months ago, unaware that a permit is required for such work. He added that he was also unaware that rental of the apartment over the garage on his property also violated Township zoning ordinances. He acknowledged that there is a tenant and that he would file a separate application to this Board to address the situation within 60 days however his immediate concern is the stabilization of the steep slope area.

Mr. Schley advised the Board that according to Township zoning ordinances, disturbance of steep slopes greater than 25% such as the ones on the subject property, is prohibited. He opined that because the vegetation which previously stabilized the area has been removed, simply replacing the soil would not stabilize the slopes and return them to their original state.

In reference to the location of the pool, Mr. Schley explained that the Applicant would have to cut further into the slopes to create a conforming area. He noted that there is a conforming location on the site, however because it is so far from the house and on top of the slope, it would be impractical.

Mr. Colucci introduced four (4) photos into evidence to show the slope area, the view of the pool area from Lot 41 which would be minimal because of existing vegetation and the additional arborvitaes he had planted.

In reference to the carriage house apartment over the garage, Mr. Schley advised the Board that in 1983, temporary approval was granted. Among the conditions of the approval was that the variance was personal to the prior property owners to whom it was granted, and that the approval would terminate when those prior property owners ceased to reside in the main dwelling. He noted that the Applicant was asked about the apartment when this application was originally submitted and that it should have been included in the proceedings tonight however it was decided to move forward without the apartment variance request in order to stabilize the existing conditions. Mr. Colucci stipulated to a condition stating that there will be no construction or land disturbance, with the exception of slope stabilization, until the apartment issue is addressed.

Referring to the Environmental Commission's memo (05/25/2021), Mr. Quinn stated that currently, stormwater runoff flows down onto the driveway and then to the road, not onto surrounding properties. If the water is collected, there is no place to discharge it so it is better to let it flow over land. He added that creating a flat area and installing a pool would actually be beneficial since the pool itself would catch some of the water and the flat area would slow the flow so that the ground could absorb some of it.

Mr. Colucci testified that he had spoken to the owners of the adjacent properties (Lots 41 and 43) and that they had not voiced any concerns about the project.

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

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variance relief for the pool location and the steep slope disturbance. Ms. Baumann 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 and subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Tancredi seconded.

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

Motion carried.

PUBLIC HEARING

Kenken LLC; Block 1805, Lot 42; 1 Brownlee Place; Preliminary/Final Site Plan, Floor-Area Ratio Variance (D-4), Bulk Variances; ZB21-014

Present:	Jason R. Rittie, Esq., Attorney for the Applicant
	Kenneth J. Fox, AIA, PP, Architect and Planner for the Applicant

Jason R. Rittie, Esq., attorney with the firm of *Einhorn, Barbarito, Frost, Botwinick PC*, Denville, NJ, entered his appearance on behalf of the Applicant. He gave a brief description of the subject property and the two (2) buildings on it and outlined the relief being sought to construct a two-story addition to the building in the back. He stated that because of the late hour, the application would have to be carried to a future meeting however he opined that it would be beneficial if the Applicant's architect, Kenneth J. Fox, could address some of the issues raised in the memos from the Board's professionals and get some feedback from those professionals and the Board itself.

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

Kenneth J. Fox, AIA, PP, senior architect and president of *Fox Architectural Design PC*, Ledgewood, NJ, was accepted by the Board as an expert in the fields of architecture and professional planning. Mr. Fox testified that no construction or modifications are planned for the front building which is on the corner of Brownlee Place and West Henry Street. Referring to the two-story building to the rear which faces West Henry Street and currently houses an ice cream parlor, he stated that the Applicant is seeking to construct a two-story addition to provide more usable space upstairs, to upgrade the first floor area and to replace the existing staircase which is very steep and narrow.

Exhibit A-1, dated 06/07/2021, a revision of page A-1 of the architectural plans prepared by Fox Architectural Design PC, was entered into evidence. Mr. Fox stated that this exhibit showed the revisions that had been made to address concerns expressed in memos from the Historical Preservation Advisory Committee of the Historical Society of Somerset Hills (03/23/2021) and the Environmental Commission (04/28/2021) about the proposed façade. He noted that the stone had been replaced with clapboard siding which is similar to the other building on the site as well as buildings in the surrounding area and is more appropriate historically. Although currently the first floor is handicapped accessible, in response to comments made, the new floor plan provides for a handicapped accessible bathroom. Finally, he stated that although the first floor is currently depicted on the plans as a sit-down restaurant, the Applicant seeks to change to a take-out and delivery pizza business which is similar to the current usage in that there is no seating. Mr. Schley advised the Applicant that a "delivery" restaurant is not a permitted use and would require an additional "d" variance.

In reference to providing a handicapped parking stall, Mr. Fox stated that an area could be designated with signage but not with striping since it is a gravel parking lot. Mr. Quinn advised that the surface area for an ADA stall and the route to the restaurant has to be hard. It could be gravel, but it must be hard and smooth.

A discussion ensued about an existing shed which encroaches onto the adjacent property as well as parking areas which have no discernable boundaries and appear to encroach also, along with traffic safety during the afternoon hours during Oak Street School dismissal.

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

Mr. Warner advised the Applicant that this application would be carried *with further notice* (for the extra "d" variance, if necessary) to 09/08/2021 and requested an Extension of Time to Act through 09/30/2021.

COMMENTS FROM MEMBERS OR STAFF

Chairman Breslin reminded the Board that there will be a meeting the following week on 06/17/2021.

ADJOURN

Moved by Mr. Tancredi, seconded by Mr. Kraus, all in favor and carried, the meeting was adjourned at 10:20 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 07-07-2021

06/22/2021v2 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**LOUIS and NELLIE VIAL
Case No. ZB21-008**

RESOLUTION

WHEREAS, LOUIS and NELLIE VIAL (hereinafter referred to as the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (hereinafter referred to as the “Board”), for the following variance relief in connection with the construction of a rear deck with a built-in spa/pool, to be located on property identified as Block 2004, Lot 2, on the Official Tax Map of the Township of Bernards, more commonly known as 10 Brook Avenue, Bernards, New Jersey (hereinafter referred to as the “Property”):

A pool location variance, where the proposed pool is not behind the rear building line of an adjacent dwelling, in violation of Section 21-18.1 of the Township’s Land Development Ordinance (hereinafter referred to as the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on May 5, 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 Applicants’ proposal is depicted on a Survey Plan prepared by Richard G. Titus, a New Jersey Professional Land Surveyor, of Titus Surveying & Engineering, P.C., with a business address of 618 Somerset Street, North Plainfield, New Jersey, dated January 12, 2012, same consisting of one (1) sheet. The Applicants also submitted a compendium of eight (8) photographs.

3. The Property consists of 0.77 acres and is located in the R-7 (1/2 acre minimum) Residential Zone.

4. 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.

5. The Applicants propose the replacement of an existing open rear deck with a thirty (30) foot by thirty-two (32) foot (960 square feet) partially covered deck with a built-in spa/pool, same to be located on the Property. The proposed deck will have a thirteen (13) foot by thirty-two (32) foot (416 square feet) portion of deck, closest to the rear of the dwelling, covered with a roof, with the seventeen (17) foot by thirty-two (32) foot (544 square feet) balance of the deck to be open and include a 7.75' x 14.5' (113 square feet) built-in spa/pool.

6. A spa (or a hot tub) and a swimming pool are typically different in terms of size and function, however, the Land Development Ordinance of the Township of Bernards provides no distinction. Based on the definition provided at §21-3.1 of the Ordinance, the Applicants' proposed spa is considered a swimming pool, and is subject to the ordinance requirements applicable to swimming pools. Pursuant to the Ordinance, a swimming pool is defined as:

“SWIMMING POOL, PRIVATE RESIDENTIAL - Shall mean and include artificially constructed pools, whether located above or below the ground, having a depth of more than 18 inches and/or a water surface in excess of 100 square feet; designed and maintained for swimming and bathing purposes by an individual for use by members of his household and guests; and located on a lot as an accessory use to a detached dwelling. The term “swimming pool” shall include all buildings, structures, equipment and appurtenances thereto.”

7. The proposed spa/pool location requires a variance because it does not comply with §21-18.1 of the Ordinance, which states “the pool shall be located behind the rear building line of existing residential structures on adjoining lots.” The proposed spa/pool is not to the rear of the

adjoining dwelling on Lot 1 (2 Brook Avenue) to the north side of the Property.

8. The Applicants' Property, while conforming, is irregularly shaped and unusually wider than it is deep. The adjoining lot, Lot 1, is a deeper lot, with the dwelling on Lot 1 having been constructed further from Brook Avenue than the Applicants' dwelling, such that the rear building line of the dwelling on Lot 1 is about thirty-five (35) feet further back on the property than the Applicants' rear building line, which creates the need for this variance.

9. While it appears possible for the Applicants to comply with the pool location requirement of the Ordinance, the Applicants would be required to relocate the spa/pool to the northerly, deeper portion of the Property, behind the driveway, and in a heavily wooded area. Such a location not only appears to be impractical (given the pool/spa is intended to be built into the deck), but it would place the spa/pool closer to the dwelling on Lot 1.

10. All required checklist items have been submitted and the Application has been deemed complete.

11. Louis and Nellie Vial, the Applicants, with an address of 10 Brook Avenue, were duly sworn according to law. The Applicants testified that the spa/pool is "semi-recessed" in the deck, which would make it no more visible to neighbors than a grill, which would be close to the dwelling. Should the Applicants conform with the Ordinance, the proposed deck and spa/pool would be more visible from the neighboring lots.

12. In addition, the Applicants testified as follows:

- a. There is a significant tree line between the Property and those adjoining it;
- b. There is a significant amount of landscaping on the Property;
- c. The photographs presented to the Board, which were timely submitted prior to the hearing, are accurate depictions of the Property, all of which depict various views to and from the Applicants' Property;

- d. The Applicants state that they had spoken to their neighbors on Lot 1, and they had no objections to the Application;
- e. The existing shed and fence located on the Property will remain;
- f. No tree removal is proposed;
- g. The partially covered deck will have an “open roof” with shingles and a trellis, but it will not extend over the spa; and
- h. The proposed exterior lighting will be directed downward or otherwise shielded so that glare, direct light or reflection will not be a nuisance to adjoining properties.

13. According to the Board’s Professionals, the current deck and the uncovered portion of the proposed deck are considered “open” and are not counted as impervious coverage.

14. Notwithstanding that there is no issue regarding impervious coverage, the Applicant testified that the existing shed will be shown on the plan and will be included in the lot coverage calculation prior to issuance of a construction permit.

15. The Applicants stipulated that they will comply with the “best management practices” when discharging pool water.

16. The Applicants stipulated, as conditions of approval, to complying with all applicable comments made in both the Board Planner, Mr. Schley’s, Review Memorandum, and the Board Engineer, Mr. Quinn’s, Review Letter. The Applicants further stipulated to complying with the comments set forth in the Environmental Commission’s Review Memorandum.

17. On questioning as to the coverage associated with the existing shed, Mr. Quinn testified that the shed does not put the Applicants over the permitted maximum impervious coverage and that they “have plenty of room.” Consistent with the same, Mr. Quinn testified that the development falls below the necessary requirements to necessitate stormwater management compliance.

18. Further, Mr. Quinn testified that it is likely that any soil disturbance associated with

the proposal would not disturb more than five thousand (5,000) square feet of soil, therefore not prompting certification from the Somerset-Union Soil Conservation District. If the proposal does exceed said disturbance, the Applicants stipulated that they will seek certification of the same.

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

DECISION

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

Subsection c(1) – Positive Criteria:

21. As to the positive criteria for the subsection "c(1)" or "hardship" variance for the requested pool location deviation, 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 as the owners of the Property.

22. The proposed pool is not to the rear of the adjoining dwelling on Lot 1 (2 Brook Avenue). To comply with the pool location requirement, the proposed pool would have to be located to the rear of the proposed location (i.e., into the wooded area near the Applicants' shed), and locating the pool in said location would result in additional soil disturbance, tree removal, and safety concerns due to limited visibility of the pool from the dwelling. Additionally, locating the pool in a conforming location would result in the pool being closer to the adjacent dwelling.

23. The Board finds that the hardship that would result from the strict application of the zoning ordinance provisions would not be the result of conditions that were "self-created" by

the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1), for the requisite pool location variance relief.

Subsection c(2) – Positive Criteria:

24. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for the pool location deviation, 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 deviation from the zoning requirement and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that locating the proposed pool in a conforming location would require additional soil disturbance and would result in the pool being even closer to the adjacent neighbor than proposed, such that locating the pool in the proposed nonconforming location actually constitutes a better planning alternative than locating it in the conforming location. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2), for the requisite pool location variance relief.

Negative Criteria:

25. As to the negative criteria required for the applicable variance relief, pursuant to both 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 not be out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. In this regard, the Board recognizes that the pool will be sufficiently screened by both the existing landscaping and fencing, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. The Board further recognizes, in this regard, that no member of the public objected to the Applicants' proposal.

26. 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 structures. 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 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. As such, the Board finds that the Applicants have satisfied the negative criteria, pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2), for the pool location variance relief.

27. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested pool location 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 May 5, 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 9th day of June, 2021, that the application of **LOUIS and NELLIE VIAL**, 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 pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
3. Prior to issuance of a construction permit, the plan shall be revised to show and quantify the proposed limits of disturbance and to show the existing shed, which shall be included in the lot coverage calculation;
4. Any proposed exterior lighting shall be directed downward or otherwise appropriately shielded or recessed and shall comply with all applicable Ordinance requirements so that glare, directed light or reflection will not be a nuisance to adjoining properties;
5. No trees are to be removed, or the Applicants shall submit a tree removal/replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
6. Soil from the pool excavation, if any, 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;
7. The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission;
8. 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;
9. 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
10. 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 (1) year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 June 9, 2021.



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

Dated: June 9, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**SALVADOR and SOFIA SIMAO
Case No. ZB21-009**

RESOLUTION

WHEREAS, SALVADOR and SOFIA SIMAO (hereinafter referred to as the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (hereinafter referred to as the “Board”), for the following variance relief in connection with the construction of an inground pool to be located on property identified as Block 4301, Lot 67.02 on the Official Tax Map of the Township of Bernards, more commonly known as 20 Canoe Brook Lane (hereinafter referred to as the “Property”).

A pool location variance, where the proposed pool is not behind the rear building line of an adjacent dwelling, in violation of Section 21-18.1 of the Township’s Land Development Ordinance (hereinafter referred to as the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on May 5, 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 Applicants’ proposal is depicted on a Proposed Pool Plan, prepared by Richard A. Nusser, P.E., with a business address of 428 Patton Avenue, Piscataway, New Jersey, dated October 13, 2021, consisting of three (3) sheets. The Applicants also submitted a land survey titled “Proposed Pool Plan,” prepared by Salvatore Miklowcic, a New Jersey Professional Land Surveyor, with a business address of 3364 Lukes Pond Road, Branchburg, New Jersey, dated

October 13, 2021, same consisting of four (4) sheets. The Applicants also submitted a compendium of eight (8) photographs.

3. 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.

4. The Property consists of 3.489 acres and is located in the R-1 (3 acre minimum) Residential Zone.

5. The Applicants' Proposal is to construct an irregularly shaped, eight hundred fifty (850) square foot inground swimming pool, with an attached fifty (50) square foot spa, and one thousand six hundred (1,600) square feet of adjoining patio to the rear of the existing dwelling.

6. The proposed pool location requires a variance as the proposal does not comply with § 21-18.1 of the ordinance, which states that "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 67.01 (40 Canoe Brook Lane) to the northeast side.

7. Due to extensive wetlands on lot 67.01, the dwelling had to be constructed further back on the property than most dwellings in the neighborhood. Due to extensive "juxtaposed" wetlands on the Applicants' Property, which are in the rear, and the existing location of each dwelling on opposite ends of each respective lot, it is not possible for the Applicants to comply with the pool location requirement.¹

8. Salvador and Sofia Simao, the Applicants, were sworn according to law and testified as to the adequacy of the existing and proposed screening between the proposed pool and the adjoining dwelling on lot 67.01, which is about four hundred fifty (450) feet from the proposed pool. The Applicants testified that no existing screening will be removed, and how additional

¹ Lot 67.01, and the dwelling constructed thereon, exist as a result of a minor subdivision approval granted by the Planning Board in 2004.

screening will be added.

9. The Applicants have indicated to the Board that no existing trees are to be removed as part of its proposal. The Applicants stipulated that a tree protection, removal and replacement plan, if applicable, will be provided for review and approval by the Township Engineering Department prior to any land disturbance.

10. The Applicants testified that the only proposed lighting would be “pathway lighting,” however, they stipulated that any lighting will be directed downward or otherwise shielded so that there is no light spillage onto adjoining properties.

11. The Applicants testified that the proposed limit of disturbance is immediately adjacent to the boundary of the existing conservation easement, the purpose of which is to protect the on-site wetlands and stream buffer conservation areas. The Applicants stipulated that, prior to any land disturbance, the easement boundary will be staked out based on the location of existing easement boundary markers. If the markers cannot be located, the Applicants stated that the easement boundary will be staked out by a licensed land surveyor.

12. The Applicants testified that they will comply with all relevant stormwater management regulations contained within the Ordinance, including stormwater infiltration measures in accordance with §21-42.11 of the Ordinance. Further, the Applicants stated that the proposed rain gardens will be subject to further review and approval by the Township Engineering Department, prior to issuance of a construction permit, and that “perc” test results in support of the proposed design must be provided at that time.

13. The Applicants testified that a stormwater management easement will be deeded to the Township for the proposed rain gardens, which will include a maintenance manual, which shall be subject to review and approval by the Township Engineer. The Applicants acknowledged that

the easement must be prepared, or approved, by the Township Attorney, and must be executed by the Applicants and recorded with the Somerset County Clerk prior to issuance of a construction permit.

14. The Applicants testified that soil from the pool excavation will be removed from the site unless the Applicants submit a grading plan showing where the soil will be used on the Site, subject to review and approval by the Township Engineering Department prior to any land disturbance.

15. The Applicants acknowledged that the project is subject to approval by the Somerset-Union Soil Conservation District.

16. As a condition of any approval, the Applicants will utilize “best management practices” when discharging pool water.

17. The Applicants stipulated, as conditions of approval, to complying with all applicable comments made in both the Board Planner, Mr. Schley’s, Review Memorandum, and the Board Engineer, Mr. Quinn’s, Review Letter. The Applicants further stipulated to complying with the comments set forth in the Environmental Commission’s Review Memorandum.

18. On questioning as to the stormwater management coverage associated with the proposal, Mr. Quinn testified that it is unusual to see “rain gardens” proposed as the same can be difficult to manage. However, Mr. Quinn testified that, in his professional opinion, rain gardens are not a problem and in this case may be the preferred design, as it is likely that a high water table will preclude the use of drywells in this location.

19. No member of the public commented on, or objected to, the Applicants’ proposal.

DECISION

20. After reviewing the evidence submitted, the Board, by a vote of seven (7) to zero

(0), finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief as to the proposed pool location under N.J.S.A. 40:55D-70(c)(1).

Subsection c(1) – Positive Criteria:

21. As to the positive criteria for the “c(1)” or “hardship” variance for the requested pool location deviation, 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, as owners of the Property.

22. As to the proposed pool location, the proposed pool is not to the rear of the adjoining dwelling on Lot 67.01. To comply with the pool location requirement, the proposed pool would have to be moved to the rear of the proposed location, which in this case, inside the wetlands and/or wetlands buffers, which would likely not be permitted and would result in additional disturbance, tree removal, and safety concerns due to limited visibility of the pool from the dwelling.

23. The Board finds that the hardship that would result from the strict application of the zoning ordinance provisions would not be the result of conditions that were “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1), for the pool location variance relief.

Negative Criteria:

24. As to the negative criteria required for the variance relief, pursuant to subsections 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 not be out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. In this regard, the Board recognizes that the pool will be sufficiently screened by both 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. The Board further recognizes that no member of the public objected to the Applicants' proposal.

25. 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 structures. 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 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. As such, the Board finds that the Applicants have satisfied the negative criteria, pursuant to N.J.S.A. 40:55D-70(c)(1), for the pool location variance relief.

26. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested pool location variance relief, under N.J.S.A. 40:55D-70(c).

WHEREAS, the Board took action on this application at its meeting on May 5, 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 9th day of June, 2021, that the application of **SALVADOR and SOFIA SIMAO**, 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 pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
3. Any proposed exterior lighting shall be directed downward or otherwise appropriately shielded or recessed and shall comply with all applicable Ordinance requirements so that glare, directed light or reflection will not be a nuisance to adjoining properties;
4. The Applicants shall submit a tree protection plan (and tree removal and replacement plan, if applicable), same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
5. 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;
6. Prior to any land disturbance, the conservation easement boundary must be staked out based on the location of existing easement boundary markers. If the markers cannot be located, the easement boundary must be staked out by a professional licensed land surveyor. Prior to issuance of a certificate of occupancy/approval for the pool, it must be confirmed at all previously installed conservation easement boundary markers exist or have been replaced;
7. Stormwater infiltration measures must be provided in accordance with §21-42.11 of the Ordinance. The proposed rain gardens shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit. Perc test results in support of the proposed design must be provided at that time.
8. A stormwater management easement must be deeded to the Township for the proposed rain gardens, which will include a maintenance manual, which shall be subject to review and approval by the Township Engineer. The easement must be prepared, or approved, by the Township Attorney, and must be executed by the Applicants and recorded with the Somerset County Clerk prior to issuance of a construction permit;

9. The plan shall be revised to further define the drainage path along the western side of the proposed patio improvements into the proposed rain gardens;
10. This application is subject to approval by the Somerset-Union Soil Conservation District;
11. The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
12. The Applicants are advised that the Township Engineering Department may require additional grading information prior to the issuance of a permit;
13. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
14. The Applicants shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
15. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one (1) year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 June 9, 2021.



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

Dated: June 9, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**PHIL SEFCHOVICH and TAMARA BONILLA
Case No. ZB21-010**

RESOLUTION

WHEREAS, PHIL SEFCHOVICH and TAMARA BONILLA (hereinafter referred to as the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (hereinafter referred to as the “Board”), for the following variance relief in connection with the construction of an inground pool to be located on property identified as Block 4802, Lot 1.03 on the Official Tax Map of the Township of Bernards, more commonly known as 91 Queen Anne Drive, Bernards, New Jersey (hereinafter referred to as the “Property”):

A pool location variance, where the proposed pool is not behind the rear building line of an adjacent dwelling, in violation of Section 21-18.1 of the Township’s Land Development Ordinance (hereinafter referred to as the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on May 5, 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 Applicants’ proposal is depicted on a Site Plan & Soil Erosion & Sediment Control Plan, prepared by Thomas W. Skrable, P.E., P.P., C.M.E., Consulting Engineer, with a business address of 65 Ramapo Valley Road, Suite 213, Mahwah, New Jersey, dated March 25, 2020, consisting of one (1) sheet. The Applicants also submitted a land survey titled “Survey of Tax Lot 1.03 – Block 4802”, prepared by John C. Ritt, a New Jersey Professional Land Surveyor,

with a business address of 295 Route 22 East, One Salem Square, Suite 202, West Whitehouse Station, New Jersey, dated November 26, 2013, same consisting of one (1) sheet. The Applicants also submitted a compendium of four (4) photographs.

3. 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.

4. The Property consists of 1.404 acres and is located in the R-4 (one (1) acre minimum) Residential Zone.

5. The Applicant proposes various improvements including an approximate twelve (12) foot by twelve (12) foot (139 square feet) spa/pool, with an eight hundred fifty-five (855) square foot patio, an approximate fifteen (15) foot by sixteen (16) foot (240 square feet) pergola, a fireplace, and a fire pit to the rear of the existing dwelling.

6. A spa (or a hot tub) and a swimming pool are typically different in terms of size and function, however, the Land Development Ordinance of the Township of Bernards provides no distinction. Based on the definition provided at §21-3.1 of the Ordinance, the Applicants' proposed spa is considered a swimming pool, and is subject to the ordinance requirements applicable to swimming pools. Pursuant to the Ordinance, a swimming pool is defined as:

“SWIMMING POOL, PRIVATE RESIDENTIAL -Shall mean and include artificially constructed pools, whether located above or below the ground, having a depth of more than 18 inches and/or a water surface in excess of 100 square feet; designed and maintained for swimming and bathing purposes by an individual for use by members of his household and guests; and located on a lot as an accessory use to a detached dwelling. The term “swimming pool” shall include all buildings, structures, equipment and appurtenances thereto.”

7. The proposed spa/pool location requires a variance because it does not comply with § 21-18.1 of the Ordinance, which states “the pool shall be located behind the rear building line of

existing residential structures on adjoining lots.” The Proposed spa/pool is not to the rear of the adjoining dwelling on Lot 2 (85 Queen Anne Drive) to the north east side of the Property.

8. The dwelling on Lot 2 faces a straight portion of Queen Anne Drive, while the Applicants’ dwelling is oriented radial to the bulb of the cul-de-sac, which did not exist when the dwelling on Lot 2 was constructed. As a result, the front of each dwelling is angled toward the other, making compliance with the pool location requirement difficult, if not impossible, for both properties. The Applicants’ lot is further constrained by conservation easements encompassing the wetlands and stream buffer areas that occupy the majority of the rear yard.

9. While it appears possible for the Applicants to comply with the pool location requirement by relocating the spa/pool about forty (40) feet to the northwest, this would place the improvements in a wooded area adjacent to the conservation easement boundary.

10. Phil Sefchovich and Tamara Bonilla, with an address of 91 Queen Anne Drive, the Applicants, were duly sworn according to law. The Applicants testified as follows:

- a. The Property was purchased in approximately 2013, as new construction, with the certificate of occupancy being issued in December of that year;
- b. When the house was purchased, the Property was an “eyesore.” There is a need for a patio and a gazebo with open beams and a spa, which is a “swimming pool” as defined by the Ordinance;
- c. This project has been in the works since 2020, but was delayed due to the COVID-19 pandemic;
- d. There is a wooded area at the rear of the property that ends near the wall to Highway Route 287, with a natural buffer and a line of pine (evergreen) trees between Lots 1.03 and 1.02;
- e. There is adequate existing screening between the proposed spa/pool and the adjoining dwelling on Lot 2, which is about two hundred (200) feet from the proposed spa/pool;
- f. The Applicants intend to improve the aesthetics of the Property, which in turn will improve the aesthetics of the neighborhood;

- g. Referencing the compendium of photographs, the Applicants testified that they were taken in February 2020, and that there have not been any changes to the Property since that time;
 - h. Referencing the plans submitted to the Board, the Applicants pointed out the relationship of their dwelling with the adjacent dwellings along with the Site grading plan, which has them “ghosted in”. The proposed pool is closest to Lot 1.02, which would be visible if not for the trees;
 - i. Proper notice was sent to the neighboring property owners, but no response was received, even from owners of Lot 1.01, which now contains a dwelling; and
 - j. The trees between the Applicants’ Property and Lot 1.02 are approximately ten (10) feet tall, which are labelled as shrubs on the Site Plan, but they are really trees.
11. Mr. Schley noted that the Site Plan states that an existing row of evergreens is to be relocated, to accommodate the proposed improvements and grading. However, no trees will be removed.
12. In response to Mr. Schley’s questions regarding the location of the proposed silt fence/limit of disturbance, the Applicants testified that it will be adjusted to be along the “drip-line”, and not less than six (6) from the trunks of the existing trees that are to be preserved, which will be reviewed and approved by the Township’s Engineering staff.
13. The Applicants confirmed that any proposed exterior lighting, which will most likely be path lighting only, will be directed downward or otherwise shielded so that glare, direct light or reflection will not be a nuisance to adjoining properties.
14. The Applicants stated that soil from the spa/pool excavation will be removed from the Site. Nevertheless, should the Applicants decide to keep the soil onsite, the Applicants stipulated that they will submit a grading plan showing where the soil will be used on the Site, subject to the review and approval by the Township Engineering Department prior to any land disturbance.

15. The Applicants stipulated that prior to issuance of a construction permit, the Site Plan will be revised to include additional labeling and details of the various proposed structures and ground surfaces, including the waterfall wall, fireplace and pergola, and to show code compliant pool fence/safety barrier, to the satisfaction of the Township Engineering Department. Further, the Applicants stated that the Site Plan will be revised to include impervious coverage calculations to reflect the correct total coverage, which Mr. Schley confirmed will conform with the Ordinance.

16. Prior to issuance of a construction permit, the Applicants stated that they will submit a copy of the survey referenced on the submitted plan, which is not the same survey that was submitted with the application.

17. The Applicants stated that they will utilize “best management practices” when discharging pool water.

18. The Applicants stated that the proposed pool is twelve (12) feet by twelve (12) feet (“more of a spa than a pool”), will be flush with the top of the patio, the pool equipment is shown on the Site Plan at the corner of the dwelling, and the pool and pool equipment will likely not be visible to the neighbors.

19. On questioning as to the stormwater management associated with the proposal, Mr. Quinn testified that, prior to any land disturbance or the issuance of a construction permit, the Applicants’ engineer must revise the impervious coverage calculations to account for all impervious surfaces and then adjust the stormwater management capacity accordingly.

20. Further, Mr. Quinn testified that it is likely that the soil disturbance associated with the proposal would not disturb more than five thousand (5,000) square feet of soil, therefore not

prompting certification from the Somerset-Union Soil Conservation District. If the proposal does exceed said disturbance, the Applicants stipulated that they will seek certification of the same.

21. The Applicants testified that the existing evergreen trees between Lots 1.02 and 1.03 will be maintained, for the purpose of screening the proposed spa/pool from the dwelling on lot 1.02.

22. The Applicants stipulated, as conditions of approval, to complying with all applicable comments made in both the Board Planner, Mr. Schley's, Review Memorandum, and the Board Engineer, Mr. Quinn's, Review Letter. The Applicants further stipulated to complying with the comments set forth in the Environmental Commission's Review Memorandum.

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

DECISION

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

Subsection c(1) – Positive Criteria:

25. As to the positive criteria for the "c(1)" or "hardship" variance for the requested pool location deviation, 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 as owners of the Property.

26. The proposed pool location is not to the rear of the adjoining dwelling on Lot 2. To comply with the pool location requirement, the proposed pool would have to be moved to the

northwest of the proposed location, which in this case, would be in full view of the dwelling on Lot 2.

27. The Board finds that the hardship that would result from the strict application of the zoning ordinance provisions would not be the result of conditions that were “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1), for the pool location variance relief.

Subsection c(2) – Positive Criteria:

28. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for the pool location deviation, 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 enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that locating the proposed pool in a conforming location would require additional soil disturbance and would result in the pool being in clear view of the adjacent neighbor, such that locating the pool in the proposed nonconforming location actually constitutes a better planning alternative than locating it in the conforming location. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2), for the requisite pool location variance relief.

Negative Criteria:

29. As to the negative criteria required for all of the 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 Township's Master 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 not be out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. In this regard, the Board recognizes that the pool will be sufficiently screened by both the existing landscaping and the existing dwelling, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. The Board further recognizes that no member of the public objected to the Applicants' proposal.

30. 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 Township's Master Plan or Zoning Ordinances, particularly since pools are permitted structures. 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 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. As such, the Board finds that the Applicants have satisfied the negative criteria, pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2), for the pool location variance relief.

31. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested pool location 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 May 5, 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 9th day of June, 2021, that the application of **PHIL ZEFCHOVICH and TAMARA BONILLA**, 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 pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
3. Any proposed exterior lighting shall be directed downward or otherwise shielded so that glare, directed light or reflection will not be a nuisance to adjoining properties;
4. No trees are to be removed, or the Applicants shall submit a tree removal/replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
5. The existing evergreen trees between Lots 1.02 and 1.03 will be maintained, for the purpose of screening the proposed spa/pool from the dwelling on lot 1.02;
6. 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;
7. The plan shall be revised to show that the proposed silt fence/limit of disturbance shall be located along the drip line, and not less than six (6) feet from the trunks of the existing trees that are to be preserved;
8. Prior to the issuance of a construction permit, the plan must be revised to include more labeling and details of the various proposed structures and ground surfaces, including the waterfall wall, fireplace and pergola, and to show a code-compliant pool fence/safety barrier, and to show correct impervious coverage calculations;

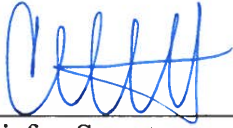
9. Prior to the issuance of a construction permit, the Applicants must submit a copy of the survey referenced on the submitted plan, which is not the survey submitted with the application;
10. The plan proposes the construction of an underground detention system that provides three hundred twenty-one (321) cubic feet of runoff volume associated with the new impervious improvements. The plan shall be revised to note that soil logging and permeability testing must be performed in the area of the proposed underground detention system to ensure compliance with the best management practice requirements for these types of systems;
11. The lot cover summary on the plans must be revised to include any impervious surface associated with pergola, the fire pit, or the waterfall wall, as required, and the storm system revised as required. It should be noted that the system, as currently designed, appears to provide ample volume to address additional impervious coverage beyond what is currently reflected in the calculations;
12. The plans must quantify the proposed limits of disturbance to clarify whether certification by the Somerset-Union Soil Conservation District is required;
13. The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
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 (1) year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 June 9, 2021.



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

Dated: June 9, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**HOWARD and KERI LESNIK
Case No. ZB21-011**

RESOLUTION

WHEREAS, HOWARD and KERI LESNIK (hereinafter referred to as the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (hereinafter referred to as the “Board”), for the following variance relief in connection with the construction of an inground swimming pool and adjoining paver patio to the rear of an existing dwelling, to be located on property identified as Block 1803, Lot 1, on the Official Tax Map of the Township of Bernards, more commonly known as 6 Cedar Street (hereinafter referred to as the “Property”):

A pool location variance, where the proposed pool is not behind the rear building line of adjacent dwellings, in violation of Section 21-18.1 of the Township’s Land Development Ordinance (hereinafter referred to as the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on May 5, 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 Applicants’ proposal is depicted on an Existing Conditions and Grading Plan for the Lesnik Residence, prepared by David J. Egarian, P.E., of DJ Egarian & Associates, Inc., with a business address of 271 Route 46, Suite G208, Fairfield, New Jersey, dated December 9, 2020, same consisting of one (1) sheet. The Applicants also submitted a Plan of Survey of Tax

Map Lot 1, Block 1803, prepared by Jack L. Held, a New jersey Professional License Surveyor, dated September 30, 2014, same consisting of one (1) sheet. In addition, the Applicants submitted a compendium of five (5) photographs.

3. The Property consists of 0.69 acres and is locate in the R-6 (3/4 acre minimum) Residential Zone.

4. 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.

5. The Applicants propose the construction of an eighteen (18) foot by thirty-six (36) foot (648 square feet) inground swimming pool and an adjoining six hundred four (604) square foot paver patio to the rear of the existing dwelling.

6. The proposed pool location requires a variance because it does not comply with §21-18.1, 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 2 (10 Cedar Street) to the west/rear of the applicants’ property, and Lot 13 (185 South Finley Avenue) to the south side.

7. The Property contains an area approximately eighteen (18) feet by seventy (70) feet where it appears that a fully conforming pool could be located. To comply with the pool location requirement as it relates to the dwelling on Lot 2 to the west/rear, the pool would have to be moved approximately seven (7) feet to the south, closer to the dwelling on Lot 13. To comply with the pool location requirement as it relates to the dwelling on Lot 13 to the south side, the pool would have to be moved approximately eighteen (18) feet to the west, closer to the dwelling on Lot 2.

8. Howard and Keri Lesnik, the Applicants, with an address of 6 Cedar Street, Bernards, New Jersey, were duly sworn according to law. The Applicants testified as to the

adequacy of the existing/proposed screening between the proposed pool and the adjoining dwellings, consisting of trees, shrubs and fencing. The dwelling on Lot 2, to the west/rear, is approximately sixty-five (65) feet from the proposed pool/patio, and the dwelling on Lot 13, to the south side, is approximately one hundred (100) feet from the proposed pool/patio.

9. In addition, the Applicants testified as follows:

- a. No existing trees are to be removed. If the proposal is to be constructed in a conforming location, tree removal would be required. In the alternative, should the removal of any trees be required, a tree removal/replacement plan will be provided for review and approval by the Township Engineering Department prior to any land disturbance;
- b. With regard to the existing perimeter fence, it will be completely compliant to serve as a pool fence once the gate is replaced. At this time, the Applicants do not have any plans to replace any of the fence, but if they do replace it, the new fence will be a similar six (6) foot high solid fence;¹
- c. The Applicants spoke with neighboring property owners, none of which expressed any concerns regarding the screening;
- d. With regard to lighting, the Applicants propose only those lights to be located inside of the pool, but if they do add more lighting, it will be directed downward or otherwise shielded so that glare, direct light or reflection will not be a nuisance to adjoining properties; and
- e. With regard to the proposal to remove a five hundred seventeen (517) square foot portion of the existing driveway, part of which is located within the Township's right-of-way. The Applicant stated that it will remove all of all driveway located between the area shown on the Plans "to be removed" and the Cedar Street sidewalk. An engineering permit for work in the Township's right-of-way may be required by the Engineering Department.

10. The Applicants' civil engineer, Jeff Egarian, P.E., of DJ Egarian & Associates, Inc., having an address of 271 Route 46, Suite G208, Fairfield, 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.

¹ The Applicant acknowledged that should be fence be replaced, any replacement must be compliant with the Ordinance and will require an application and permit.

11. Mr. Egarian testified with regard to the removal of a portion of the driveway. Mr. Egarian stated that a two hundred eighty-four (284) square foot section of the walkway will be removed along with five hundred seventeen (517) feet of driveway.

12. With regard to soil removal for the pool, Mr. Egarian testified his office will provide a cut/fill summary, which will essentially result in a “net of zero (0)”. Mr. Egarian stated that a grading plan will be prepared and submitted to the Township’s Engineering Office stating the same, prior to any land disturbance, as well as approval by the Somerset-Union Soil Conservation District. Further, with regard to the grading plan, the Applicant will provide a swale at the northwest corner of the pool patio as recommended by Mr. Quinn.

13. As a condition of any approval, Mr. Egarian testified that the Applicants will utilize “best management practices” when discharging pool water.

14. The Applicants stipulated, as conditions of approval, to complying with all applicable comments made in both the Board Planner, Mr. Schley’s, Review Memorandum and the Board Engineer, Mr. Quinn’s, Review Letter. The Applicants further stipulated to complying with the comments set forth in the Environmental Commission’s Review Memorandum.

15. No member of the public commented on, or objected to, the Applicants’ proposal.

DECISION

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

Subsection c(1) – Positive Criteria:

17. As to the positive criteria for the subsection “c(1)” or “hardship” variance for the

requested pool location deviation, 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 as the owners of the Property.

18. The proposed pool is not to the rear of the adjoining dwelling on Lot 2 (10 Cedar Street) or Lot 13 (185 Finley Avenue). To fully comply with the pool location requirement, the proposed pool would have to be located to the southwest of the proposed location (i.e., closer to both Lot 2 and Lot 13), and locating the pool in said location would require tree removal, as well as raise safety concerns due to limited visibility of the pool from the dwelling.

19. The Board finds that the hardship that would result from the strict application of the zoning ordinance provisions would not be the result of conditions that were “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1), for the requisite pool location variance relief.

Subsection c(2) – Positive Criteria:

20. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for the pool location deviation, 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 requirement and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that locating the proposed pool in a conforming location would require the pool to be closer to either of the opposite adjoining lots, depending on

which adjoining lot the proposed pool location is compliant with, such that locating the pool in the proposed nonconforming location actually constitutes a better planning alternative than locating it in the conforming location. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2), for the requisite pool location variance relief.

Negative Criteria:

21. As to the negative criteria required for the applicable variance relief, pursuant to both 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 not be out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. In this regard, the Board recognizes that the pool will be sufficiently screened by both the existing landscaping and fencing, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. The Board further recognizes, in this regard, that no member of the public objected to the Applicants' proposal.

22. 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 structures. 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 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. As such, the Board finds that the Applicants have satisfied the negative criteria, pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2), for the pool location variance relief.

23. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested pool location 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 May 5, 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 9th day of June, 2021, that the application of **HOWARD and KERI LESNIK**, 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 pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
3. Any proposed exterior lighting shall be directed downward or otherwise shielded so that glare, directed light or reflection will not be a nuisance to adjoining properties;
4. No trees are to be removed, or the Applicants shall submit a tree removal/replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;

5. 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;
6. The Applicants' proposal includes the removal of a five hundred seventeen (517) square foot portion of an existing driveway. The plan must be revised to clarify how much, if any, of the driveway area to be removed extends into the Cedar Street right-of-way. The proposal shall include the removal of all driveway located between the area shown to be removed and the Cedar Street sidewalk. An engineering permit may be required by the Engineering Department.
7. The project is subject to approval by the Somerset-Union Soil Conservation District.
8. The Applicants shall maintain the existing six (6) foot high solid perimeter fence for the purpose of screening the pool/patio from the adjoining properties and from South Finley Avenue. In the event the Applicants choose to remove or replace any portion of the existing fence, the replacement fence shall be a similar six (6) foot high solid fence. In the alternative, any portion of fence may be replaced with a row(s) of evergreen plantings of a minimum planting height of four (4) feet and of sufficient spacing to provide adequate screening, to the satisfaction of the Township Engineering Department. In all cases the pool will remain enclosed by a code-compliant pool fence/safety barrier.
9. The grading plans must be modified to provide a swale with the 101 contour with a high spot of 101.2, located at the northwest corner of the proposed pool patio.
10. The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission;
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 (1) year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 June 9, 2021.



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

Dated: June 9, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**CAELEIGH CALVERT
Case No. ZB21-020**

RESOLUTION

WHEREAS, CAELEIGH CALVERT, (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following bulk variances in connection with the replacement of an existing six (6) foot tall solid wood fence on property identified as Block 603, Lot 12 on the Official Tax Map of the Township of Bernards, more commonly known as 19 Fieldstone Drive (the “Property”):

- (1) A variance for a proposed replacement fence located in a front yard with a height of 6 feet, whereas the maximum permitted height for a fence located in a front yard is 4 feet, pursuant to Section 21-16.2(a) of the Land Development Ordinance;
- (2) A variance for a proposed replacement fence located in a front yard that is solid, whereas fences located in a front yard shall be constructed such that at least 50% thereof is open, pursuant to Section 21-16.2(a) of the Land Development Ordinance; and
- (3) A variance for an existing side-yard setback (west) to an accessory structure (shed) of 2.3 feet, whereas the minimum required side-yard setback to an accessory structure is 15 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on May 13, 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 any objectors and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions;

1. The Board has reviewed the application and deemed it to be complete.

2. The Property is a slightly undersized and narrow “through” lot with frontage on both Fieldstone Drive (the “primary” frontage) and Morristown Road/Route 202 (the “secondary” frontage). Yards on through lots are designated and regulated as specified in the definition provided in Section 21-3.1 of the Land Development Ordinance, which provides:

LOT, THROUGH – Shall mean a lot fronting on two streets which do not intersect each other at the boundaries of the lot. A through lot shall have two side yards and two front yards. The principal front yard shall be designated on the approved site plan, subdivision map or individual plot plan. The other front yard would only be considered a front yard for the distance established by the front yard setback required for that zone. The area between the rear of the building to the line established by the front yard setback would be considered a rear yard in all aspects except for fencing. Fencing in this rear yard area shall be to front yard standards. (See Figure 203)

3. Given the above definition, all fencing between the Applicant’s dwelling and Fieldstone Drive, and all fencing between the Applicant’s dwelling and Route 202, must comply with the front yard fence construction standards. Specifically, front yard fences may not exceed 4 feet in height and must be at least 50% open.

4. The Applicant proposes to replace an existing 6-foot-tall solid wood fence with a new six (6) foot tall solid vinyl fence consisting of three lengths of approximately 85 feet along the east side property line, approximately 110 feet along the west side property line, and approximately 157 feet across the rear yard. All of this fencing is in the Applicant’s rear yard, i.e., it’s between the rear of the dwelling and the 50-foot front setback line, however, the majority of this fencing (excluding the sections adjacent to the sides of the dwelling) is subject to the front yard bulk zoning standards. The rear/southernmost section of the proposed fence is generally parallel to Route 202 and is set back between approximately 72 feet and approximately 85 feet from the Route 202 right-of-way. The Applicant also seeks variance relief for an existing fence along the west side property line, which is partially located in the Fieldstone Drive front yard and requires the same variances as the proposed replacement fence. and an existing shed that is located

2.3 feet from the westerly side property line, whereas the minimum required accessory side-yard setback is 15 feet.

5. The requested variance relief for the fence height and construction deviations, as well as the accessory side-yard setback deficiency for the existing shed, is governed by the criteria of N.J.S.A. 40:55D-70(c).

6. The Applicant's proposal is depicted on a Plan of Survey prepared by Daren C. Leeper, P.L.S., of Leeper Land Group, LLC, dated December 22, 2020, unrevised, same consisting of two (2) sheets. The Applicant also submitted a compendium of four (4) photographs of the existing fence.

7. The Board Attorney confirmed that the Applicant had provided adequate notice in accordance with the Municipal Land Use Law ("MLUL").

8. The Board Planner, David Schley, P.P., and the Board Engineer, Thomas Quinn, P.E., C.M.E., both were duly sworn according to law.

9. Caeleigh Calvert, the Applicant, having an address of 19 Fieldstone Drive, was duly sworn according to law. Ms. Calvert testified that she is seeking approval to replace the existing 6-foot-high solid fence with new a 6-foot-high solid fence. She explained that, even though the existing fence is located to the rear of her dwelling, which faces Morristown Road/Route 202, because her lot is a "through lot" and fronts on both Fieldstone Drive (the "primary" frontage) and Morristown Road/Route 202 (the "secondary" frontage), both the "primary" and "secondary" frontages are treated as "front yards." Ms. Calvert explained that she was seeking to construct a 6 foot high solid fence for safety and privacy reasons, since she has small children, as well as to help mitigate road noise.

10. Ms. Calvert entered into evidence, as **Exhibit A-1**, a black-and-white photo of the proposed white vinyl fence that she had taken. She testified she proposes to replace the existing wood fence with a vinyl fence instead of the wood fence shown in the photographs submitted with the application materials. Ms. Calvert further testified that the fence would look the same on both sides, and she confirmed that no trees would be impacted or removed as part of the improvements.

11. Mr. Schley, the Board Planner, noted that the existing shed does not comply with the minimum side-yard setback requirements and that same requires the Applicant to obtain variance relief in order to maintain it in its present location. The Board Attorney opined that, although the public notice did not specifically mention the accessory structure side-yard setback variance relief, the Board has jurisdiction to grant said relief given the “catch all” phrase contained within the notice.

12. Mr. Schley also noted that the adjacent neighbor had installed solid fencing on the Applicant’s property in the front yard along the driveway, which would also require variances for maximum fence height and for fence construction because of the front yard location.

13. On discussion, Mr. Schley advised that the comments in his April 30, 2021 Review Memorandum were addressed to his satisfaction. The Board Engineer, Mr. Quinn, had no comments. The Environmental Commission requested that the Applicant confirm that the new location of the fence would not have any impact on the existing trees, and Ms. Calvert did so.

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

DECISION

15. 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 fence height and

construction variance relief (both as to the proposed fence and the existing fence installed by the adjacent neighbor on the Applicant's property along the west side property line), as well as the deficient accessory side-yard setback relief, under N.J.S.A. 40:55D-70(c)(1).

16. As to the positive criteria for a (c)(1) or "hardship" variance, the Board finds that the Applicant has satisfied her burden of demonstrating that the strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, her as the owner of the Property. The Board recognizes that the Applicant's lot is a "through" lot, with front yards along both Fieldstone Drive and Route 202 and, given the definition of a "through" lot, all fencing between the Applicant's dwelling and Fieldstone Drive, and also all fencing between the Applicant's dwelling and Route 202, is subject to front yard standards (i.e., front yard fences may not exceed 4 feet in height and must be at least 50% open). As such, the Board finds that the Applicant cannot construct a conforming fence that would both meet the fence height and construction requirements, and still provide safety, security, and privacy. As to the pre-existing non-conforming accessory structure (shed), the Board recognizes that the shed has existed on the Property since before the Applicant purchased the Property without incident, and that requiring the Applicant to relocate the shed would result in undue hardship upon her. The Board finds that the Applicant has demonstrated that the practical difficulty/undue hardship to the Applicant was not self-created by the Applicant, nor any predecessor-in-title. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested subsection c(1) variance relief.

17. As to the negative criteria for the requested subsection c(1) variance relief, the Board finds that the Applicant has satisfied the negative criteria, that is, she 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 and Zoning Ordinance. As to the substantial detriment prong, the Board recognizes that the Applicant is replacing an existing fence in poor condition with a new, more aesthetically pleasing fence, and that same will not be substantially out of character with the neighborhood. The Board notes that the non-conforming shed has existed without detrimental impact for many years. The Board further recognizes that no member of the public objected to the Applicant's proposal.

18. As to the substantial impairment prong of the negative criteria, the Board recognizes that fences and accessory structures are permitted in the R-4 Zone, and that granting the requested relief certainly does not rise to the level of a rezoning of the Property. As such, the Board finds that the Applicant has satisfied both the positive and negative criteria for the requested subsection c(1) variance relief.

WHEREAS, the Board took action on this application at its meeting on May 13, 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 9th day of June, 2021, that the application of CAELEIGH CALVERT, 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 pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
3. No trees shall be removed, or, if same is not possible, the Applicant shall submit a tree removal/replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;

4. The replacement fence shall be a white vinyl fence that is identical on both sides and there shall be no substantial change in type, materials or color without further Board approval;
5. 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;
6. 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
7. 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 (1) year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 on June 9, 2021.



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

Dated: June 9, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**BRAEMAR PARTNERS
Case No. ZB20-027**

RESOLUTION

WHEREAS, BPS BASKING RIDGE PROJECT GP, LP d/b/a **BRAEMAR PARTNERS** (the “Applicant” or “Braemar”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for preliminary and final site plan approval, and the following variance relief, in connection with the removal of two existing dwellings and the construction of a two-story assisted living facility (“ALF”) containing 80 units (100 beds), on property identified as Block 8201, Lots 22 and 23 on the Tax Map of the Township of Bernards, more commonly known as 3066 and 3074 Valley Road (the “Property” or the “Site”):

- (1) A d(3) conditional use variance for the location of an ALF fronting on Valley Road (a County road), whereas the lot or tract on which the ALF is situated must front on the County road known as “King George Road”, pursuant to Section 21-12.3.m.5.b of the Land Development Ordinance;
- (2) A d(3) conditional use variance for a lot frontage of 440.17 feet and a lot width of 427 feet, whereas the minimum lot frontage and width for an ALF is 500 feet, pursuant to Section 21-12.3.m.6.b of the Land Development Ordinance;
- (3) A d(3) conditional use and bulk variance for an 8 foot tall solid wood fence in the rear of the ALF where the courtyard area for the Memory Care portion of the ALF is to be located, whereas the maximum fence height in a side or rear yard is 6 feet, pursuant to Section 21-12.3.m.18 and Section 21-16.2.b of the Land Development Ordinance;
- (4) An exception for a spacing of light standards for other than walkway lighting of 55 feet, whereas standards for other than pedestrian walkway lighting shall be spaced a distance not to exceed five (5) times the mounting height (here, 5x10 feet), pursuant to Section 21-12.3.m.13.c and Section 21-41.2 of the Land Development Ordinance;
- (5) An exception for an average illumination in residential vehicular areas of 1.3 footcandles, whereas the maximum average illumination in residential vehicular

areas is 0.4 footcandles, pursuant to Section 21-12.3.m.13.c and Section 21-41.3 of the Land Development Ordinance;

- (6) An exception for an average illumination in residential sidewalk areas of 1.0 footcandles, whereas the maximum average illumination in residential sidewalk areas is 0.2 footcandles, pursuant to Section 21-12.3.m.13.c and Section 21-41.3 of the Land Development Ordinance; and
- (7) An exception for a 24 foot wide fire lane with the road edge approximately 6 feet from the structure, whereas all buildings shall have fire lanes in front of their public entrance and same shall be at least 25 feet in width with the road edge closest to the structure at least 20 feet from the structure, pursuant to Section 21-12.3.m.18 and Section 21-46A.1.e.5 of the Land Development Ordinance; and

WHEREAS, public hearings on notice were held on such application on April 7, 2021 and May 13, 2021, at which times 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 members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. Board Member Tancredi recused himself from hearing the case.
2. The Board reviewed the application and deemed it to be complete at a prior meeting.
3. The Property consists of 11.69 acres and is comprised of two adjoining lots presently developed with single-family residences. The Site has 440.17 feet of street frontage on the north side of Valley Road and is over 1,000 feet deep, adjoining the Passaic River to the rear. The existing residential improvements are concentrated at the front of the Site. The rear of the Site is wooded and encumbered by wetlands, floodplain, stream buffers and riparian zone associated with the Passaic River and an unnamed tributary that traverses the rear of the property.

4. The Applicant proposes to remove the existing residential improvements, including two single-family dwellings, several accessory structures, and three driveways/curb cuts at Valley Road, and to construct a two-story, approximately 70,000 square foot ALF containing 80 units with 100 beds. It should be noted that 10% (or 10 beds) of the beds within the ALF will be reserved for Medicaid-eligible persons, thereby exceeding the ordinance requirement that ten (10%) percent of the units be developed within the ALF for low and moderate income persons.

5. The proposal includes a single, two-way driveway off Valley Road. A two-way interior driveway circles the building and provides access to a covered drop-off area at the main/front building entrance, 42 parking spaces along the front and sides of the building, and a service area (loading zone and covered refuse/recycling enclosure) toward the rear of the building. The proposal also includes outdoor patios in two courtyard areas, an emergency generator, a freestanding monument sign, and an above-ground sand filter basin to collect stormwater run-off. A concrete walkway with benches is proposed around the basin. The facility is proposed to be connected to the existing public water and sanitary sewer systems.

6. Pursuant to Section 21-10.4.a.3(f) of the Land Development Ordinance, an assisted living facility, which includes both assisted living units and memory care units, is a conditional use in the R-6 Residential Zone. The Land Development Ordinance in §21-3.1 provides the following definitions:

ASSISTED LIVING FACILITY Shall mean a facility which is licensed by the New Jersey State Department of Health and has obtained an approved application for a certificate of need from the Department to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door

on the unit entrance. A lockable door may be omitted for special needs units, such as those housing patients with Alzheimer's disease or similar afflictions and for which immediate staff access is necessary for the safety of the resident. A coordinated array of supportive personal and health services available 24 hours a day are usually provided. (Source N.J.A.C. 8:36-1.3.)

ASSISTED LIVING UNITS Shall mean an apartment dwelling unit which contains living, sleeping and sanitary facility accommodations, where residents meet the requirements for "assisted living residences" as defined by the State of New Jersey within N.J.A.C. 8:36 et seq., thereby requiring assistance in normal daily living activities between "independent living" and "nursing care."

MEMORY-CARE UNIT Shall mean either an assisted-living unit or a nursing-care unit for individuals who require such care due to dementia or some form of memory infirmity.

7. Since the proposal does not meet all of the conditional use standards set forth in Section 21-12.3.m, the Applicant is seeking conditional use variance approval pursuant to N.J.S.A. 40:55D-70d(3). The Applicant also seeks preliminary and final site plan approval and relief for bulk variances and design exceptions, as indicated above.

8. The Applicant's proposal is depicted on Site Plans prepared by Daniel G. Reeves, P.E., dated December 11, 2020, last revised February 22, 2021, same consisting of 23 sheets; and Architectural plans prepared by George W. Wilson, R.A., dated December 11, 2020, unrevised, same consisting of four (4) sheets. The Applicant also submitted a Survey prepared by John C. Ritt, P.L.S., dated October 8, 2020, last revised December 1, 2020, same consisting of one (1) sheet; Stormwater Management Report prepared by Daniel G. Reeves, P.E., dated December 2020; Stormwater Maintenance Manual also prepared by Mr. Reeves, dated December 2020; Environmental Impact Assessment and Project Report prepared by Charles Heydt, P.P., A.I.C.P., dated December 18, 2020; Geotechnical Engineering Report prepared by Geo-Technology Associates, Inc., dated December 2020; and a Traffic Impact Analysis prepared by John R.

Harter, P.E., and Jerrod M. Dinnen, P.E., of Atlantic Traffic and Design, dated December 11, 2020.

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

10. The Board Attorney advised that notice was sufficient and timely and, therefore, the Board had jurisdiction to hear this application.

11. Jeffrey B. Lehrer, Esq., attorney with the firm of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum PC, entered his appearance on behalf of the Applicant. He summarized the relief requested for the proposed 80-unit (100 beds) ALF, which is a permitted conditional use in the R-6 Residential Zone. Mr. Lehrer advised that the proposal does not comply with two (2) of the conditional use standards (fronting on King George Road and minimum lot frontage/width), since the ALF would be located on Valley Road and there is no property available for purchase to cure the frontage/width deficiencies of the proposed lot (currently two lots which will be merged into one). The Applicant is also requesting approval for the construction of an 8-foot-tall fence (where 6-foot tall fences are permitted) around the Memory Care Courtyard in the rear of the facility, to provide a safe environment for those residents. Finally, he stated that the Applicant is also seeking three (3) exceptions for lighting and one (1) exception for fire lane width/location.

12. Mr. Lehrer introduced into evidence, as **Exhibit A-1**, a colorized rendering of the front of the proposed ALF, undated, prepared by Meyer Design Inc.

13. Cliff Stanfield, a principal of Braemar Partners, having a business address of 1642 Powers Ferry Boulevard, Suite 250, Marietta, Georgia, was duly sworn according to law, and testified as a fact witness. Mr. Stanfield described the building, the staffing requirements and the

amenities that would be offered, noting that the Applicant would partner with The Arbor Company to conduct the day-to-day operations of the ALF. He testified that, after reviewing the memoranda from the Board's professionals, the Applicant could comply with all of the operational comments and recommendations set forth therein.

14. Responding to questions from the Board as to whether this area already has an adequate number of ALFs, Mr. Stanfield asserted that, after conducting a thorough analysis, the Applicant believed that the proposed facility would be a successful addition to the Township because it would offer options such as one and two-bedroom apartments and multiple on-site restaurants. In response to a question about ambulance service, Mr. Stanfield testified that the Applicant plans to contract with Atlantic Ambulance for medical transportation services and agreed to submit the proposal that was provided.¹ Mr. Stanfield confirmed that Braemar would be required to reserve ten (10) beds for Medicaid residents.

15. Mr. Stanfield testified that the staff will consist of 43 skilled/medical employees and 32 non-medical employees, for a total of 75 employees. He further testified that there will be three employee shifts: 7:00 AM to 3:00 PM, 3:00 PM to 11:00 PM, and 11 PM to 7:00 AM. Mr. Stanfield explained that, nationally, the average age of residents in ALFs is 87 years old. On questioning, Mr. Stanfield explained that the residents are generally individuals from the community or individuals with adult children living in the community. On further questioning, he testified that most of the residents will not be driving and, in most cases where a resident initially brings a vehicle with them to the facility, the vehicle is taken away by the resident's family members shortly thereafter. On discussion of whether Braemar will allow third-party

¹ The Applicant subsequently provided the contract between the Applicant and Atlantic Ambulance.

service providers (i.e., hair dressers, barbers, etc.) to advertise their services to the general public, Mr. Stanfield stipulated, as a condition of approval, that same would be explicitly prohibited in any contract between Braemar and the third-party providers.

16. The Board Engineer, Mr. Quinn, questioned whether the 0.5 cars/unit standard for calculating the required number of parking spaces for such a facility would be sufficient to accommodate staff, residents and visitors. Noting that this standard had been used without issue for all the other facilities Braemar had built, Mr. Stanfield opined that there was no reason to believe that there would not be sufficient parking at this facility.

17. Yongmei (Stella) Jia, residing at 3080 Valley Road, a property adjacent to the site, questioned potential traffic and construction issues.

18. Daniel G. Reeves, P.E., of Dresdner Robin, having a business address of 55 Lane Road, Suite 220, Fairfield, 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. Reeves introduced into evidence, as Exhibit A-2, a colorized version of Sheet C-301 of plans he prepared, last revised February 22, 2021.

19. Referencing Exhibit A-2, Mr. Reeves testified that the building is situated to the front of the Property in order to avoid disturbing the approximately seven (7) acres of environmentally constrained land (including wetlands and wetland buffer areas) located in the rear portion of the Property. He further testified that, notwithstanding, the proposed development complies with all of the setback requirements, as well as the maximum number of stories and maximum building height requirements. On discussion of the proposed parking, Mr. Reeves testified that same meets, or exceeds, the minimum required number of parking stalls, Americans with Disabilities Act (“ADA”) compliant parking stalls and loading spaces. He further testified

that the proposal includes one (1) externally illuminated sign and that said sign will comply with the conditional use standards. Finally, Mr. Reeves explained that the proposed driveway is a serpentine driveway because of the topography of the Property. He further explained that, because the Applicant's proposal will disturb approximately four (4) acres of the Property, the Applicant's proposal constitutes a major development and must meet the appropriate stormwater management system standards for same.

20. On discussion regarding the location of the loading docks, dumpsters and the noise associated with refuse/recycling pickup and delivery of supplies, the Applicant stipulated, as a condition of approval, to limiting the hours of pickup of refuse/recycling and delivery of supplies to between 10:00 AM and 3:00 PM.

21. Mr. Lehrer advised that the Applicant will comply with the comments in Mr. Schley's memorandum dated April 1, 2021, as well as the comments in Mr. Quinn's memorandum dated April 1, 2021. As to the comments set forth in the Environmental Commission's memorandum dated March 26, 2021, Mr. Lehrer advised that, because of the date the application was deemed complete, the Applicant is not required to meet the more stringent standards of the Township's newly revised Stormwater Management Ordinance. He added that even though the Norway Spruce is not a native tree in New Jersey, it grows faster and would provide a better buffer than another type of tree. Mr. Lehrer explained that the Applicant would submit additional materials to the Liberty Corner First Aid Squad and the Liberty Corner Fire Company to address the concerns raised in their memoranda dated March 30, 2021 and March 9, 2021, respectively, to allow both to provide any additional comments in advance of the next hearing.

22. On discussion as to the location of the emergency generator and the impact that the noise generated by it might have on the neighbors, Mr. Lehrer advised that the Applicant will submit the noise specifications to the Board for its review in advance of the next hearing.² On discussion regarding the requested exception relief for the proposed width of the fire lane (24 feet, whereas a minimum of 25 feet is required), Mr. Reeves testified that he would submit further documentation regarding same to the Board in advance of the next hearing. As to the fire lane being located less than the required minimum of 20 feet from the structure, Mr. Schley advised that the Board had granted relief for a similar situation in a previous application.

23. Todd Edelstein, 172 Riverside Drive, questioned the number of employees that would be on-site and Mr. Stanfield advised that a maximum of fifteen (15) employees would be working during any one shift. Mr. Edelstein further questioned whether a sidewalk is proposed (it is not) and whether there will be solar panels (not proposed).

24. Lauren K. Venin, L.L.A., R.L.A., C.F.M., of Dresdner Robin, having a business address of 55 Lane Road, Suite 220, Fairfield, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of landscape architecture. Ms. Venin introduced into evidence, as **Exhibit A-3**, a colorized version of Sheet L-601 of the landscape plans prepared by Mark A. Vizzini, L.L.A., last revised February 22, 2021.

25. Referencing **Exhibit A-3**, Ms. Venin described the proposed landscaping that will be installed to buffer the Property from the adjacent properties and described the various plantings and the reasons for using them. She testified that, of the proposed 201 evergreens, 22 of them are non-native Norway Spruces, and she explained that the Norway Spruce trees have a

² The Applicant subsequently submitted the generator specifications.

fast growth rate of approximately 24 inches per year, which will help the Applicant establish a sufficient buffer in less time. She further explained that the Norway Spruces are interspersed throughout the Site.

26. Ms. Venin testified that the Applicant intends to plant four (4) Red Maples along Valley Road, and a variety of shrubs/perennials and native grasses along the entrance to the ALF. She explained that the plantings would soften the visual impact of the retaining wall and provide an attractive environment for residents and visitors. As to the proposed lighting, Ms. Venin testified that the distance between the light standards exceeds the minimum required spacing of 50 feet, because if the standards are placed only 50 feet apart, the average lighting levels will be even greater than proposed. She contended that the proposed spacing is more appropriate for the Site. Ms. Venin testified that the lighting could be regulated by motion sensors or lighting programs to ensure that the lighting is appropriate at various times of the day.

27. Ms. Venin introduced into evidence, as Exhibit A-4, a colorized "Landscape Sections Exhibit" (Sheet L601A) prepared by Mark A. Vizzini, L.L.A., last revised March 22, 2021. Referencing Exhibit A-4, Ms. Venin described the proposed elevations of the building, drive aisle and Valley Road looking towards the easterly adjacent property and then towards the westerly adjacent property. She explained that Exhibit A-4 depicts the elevation of the light poles noting that if the poles were placed at the required spacing of 50 feet, the average lighting levels would be too high. Ms. Venin testified that the proposed lights will come on at dusk, then dim to 25% of the overall lighting levels between 10:00 PM and dawn, and that the lighting levels and hours of operation could be adjusted as needed. She summarized the requested exception relief for maximum illumination in residential vehicular and sidewalk areas and opined that the increased lighting levels would be safer for those driving or walking on the Property at

night, particularly employees that work the overnight shift. Ms. Venin opined that the lighting for the proposed monument sign would not distract or otherwise disturb drivers on Valley Road and that, if necessary, the lighting could be field adjusted to minimize glare. On discussion of a comment in Mr. Schley's review memorandum, she confirmed that no lights would be located in the buffer areas and that the location of drainage improvements in the buffer area would not in any way inhibit the provision of adequate screening along the adjoining residential properties. Ms. Venin, on behalf of the Applicant, stipulated to complying with the remainder of the comments and recommendations relating to landscaping and lighting in the Board Professionals' review memoranda.

28. Referencing Exhibit A-4, Ms. Venin testified that the headlights from the vehicles driving east and west along the proposed serpentine driveway would not be visible from the two (2) adjacent residential properties, because the headlights will be directed below the grade of those residences. Once the vehicles get to the portion of the driveway having the same grade as the adjacent residences (close to Valley Road), the proposed landscape buffering will screen the headlights from shining into those properties. After substantial discussion about the potential impact of the lighting on the adjacent residences, Mr. Lehrer, on behalf of the Applicant, stipulated to allowing an inspection of the landscaping by a landscape committee to ensure that the screening sufficiently mitigates any light spillage/intrusion into the adjacent properties upon completion of the improvements. In addition, he stipulated that the owners of the two adjacent properties would be notified so that they can attend the inspection and voice any concerns relating to the landscaping.

29. Yongmei (Stella) Jia, residing at 3080 Valley Road, asked if there would be any additional lighting around the holidays or special days. Mr. Stanfield responded that around Christmas there could be some “tasteful” holiday lights.

30. Xiaojun Steve Lu, residing at 3080 Valley Road, asked for confirmation that the proposed building would be lower than Valley Road and the adjacent residences. Ms. Venin confirmed that it would be lower.

31. Dan King, A.I.A., of Meyer Design Inc., having a business address of 227 East Lancaster Avenue, Ardmore, Pennsylvania, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. King introduced into evidence, as Exhibit A-5, building elevations consisting of two (2) 11” by 17” sheets, prepared by Meyer Design Inc., dated December 11, 2020, and, as Exhibit A-6, lighting fixture cut sheets consisting of five (5) sheets.

32. Referencing Exhibit A-1 and Exhibit A-5, Mr. King testified as to the proposed façades, materials, and architectural details of the proposed building, which will include cement siding, stone framing, gables and wood brackets, and brick. He stated that all of the Applicant’s communities are designed to be consistent with the individual character of the municipalities in which they are located. Mr. King further stated that the communities are also designed to have a “residential” feel.

33. Mr. King testified that 8 feet is the standard fence height around outdoor areas associated with memory care units, which are totally separate from the rest of the ALF units, and that the fence is required for the safety of the residents who may try to wander off the Property. Referencing Exhibit A-6, Mr. King explained that there would be small, low-level, security lighting fixtures at each of the exits from the building and more decorative lighting fixtures at the

main entrances. He testified that all of the lighting fixtures would utilize LED lights and would be downward directed. Mr. King further testified that the lights on the building itself will be turned off after a designated time (of 10:00 PM). He explained that the lights in the parking lot areas will remain on all night for security purposes, however, the lighting level will be reduced to 25% of the total footcandle levels. On questioning as to the types of units that will be provided, Mr. King testified that there will be studios (open bedroom with kitchenette), one-bedroom units, two-bedroom units, and shared units with a common foyer (Medicaid units).

34. John R. Harter, P.E., of Atlantic Traffic & Design Engineering LLC, having a business address of 30 Independence Boulevard, Warren, New Jersey, was duly sworn according to law, provided his qualifications, and accepted by the Board as an expert in the field of traffic engineering. Mr. Harter confirmed that he had prepared the Traffic Impact Analysis, dated December 11, 2020. Referring to the manual count summaries listed in his Traffic Impact Analysis, Mr. Harter testified that the proposed development's traffic impact on Valley Road, King George Road and the intersection of Valley Road and King George Road would be minimal based on the standards set by the Institute of Transportation Engineers ("ITE"). He further testified that the Applicant's proposal includes 42 parking stalls whereas only 40 parking stalls are required, noting that, when reviewing the ITE standards and studies of other nearby ALFs, his conclusion was that approximately 32 parking stalls would be required during peak parking demand. Based on his calculations and analysis, Mr. Harter opined that site access and site circulation are safe for pedestrians and motorists, sufficient parking is provided, and that the proposal will not generate increased traffic that would otherwise detrimentally impact traffic conditions in the neighborhood.

35. On questioning as to whether crossing the striped median in Valley Road to make a left turn into the proposed ALF is legal, Mr. Harter responded that it is permissible to do so and that the Somerset County Planning Board (“SCPB”) has approved this traffic arrangement. Referring to the SCPB’s Review Memorandum dated April 30, 2021, Mr. Harter stipulated, on behalf of the Applicant, that the Applicant would work with the County to resolve all of the issues contained therein to the County’s satisfaction.

36. Additional questions from the Board regarding school bus traffic during school hours and traffic generated on Sunday mornings by religious services were addressed to the Board’s satisfaction.

37. Todd Edelstein, having an address of 172 Riverside Drive, questioned the appropriateness and legality of vehicles crossing the striped median to turn left into the proposed facility.

38. Paul Phillips, P.P., A.I.C.P., of Phillips, Preiss, Grygiel, Leheny & Hughes LLC, having a business address of 33-41 Newark Street, 3rd Floor, Suite D, Hoboken, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of professional planning. Mr. Phillips provided testimony to satisfy the statutory requirements for the variances and exceptions requested in order for the Board to grant the requested relief, as well as preliminary and final site plan approval. He opined that the standard set forth in Sica v. Board of Adjustment of Twp. of Wall, 127 N.J. 152 (1992), rather than the standard set forth in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), governs the d(3) conditional use variance requests for relief. He explained that, pursuant to the Sica four part balancing test, the Board must (1) identify the public interest at issue, (2) identify the potential detrimental impacts, (3) determine whether the potential detriments can be mitigated by

stipulated to conditions, and then (4) balance the public interest, potential detriment, and proposed mitigation measures.

39. Mr. Phillips explained that the Applicant is required to demonstrate that the Site can accommodate the proposed use notwithstanding that the proposal does not meet all of the conditional use standards (i.e., the ALF is not located on King George Road, does not comply with the minimum lot width/frontage requirement and the proposed fence exceeds the maximum permitted height in a side or rear yard). He noted that the proposed use – an assisted living facility with a memory care unit – is an inherently beneficial use under the applicable case law. Mr. Phillips explained that there is, and will be, a continuing need for specialized care, particularly given the aging demographic and the proportion of elderly adults with dementia and memory loss. Mr. Phillips noted that the 2010 Master Plan and 2019 Master Plan Re-Examination Report recognize the need for ALFs, particularly given the specific population of Bernards Township.

40. Mr. Lehrer reminded the Board that the Applicant had previously stipulated to allowing a landscape committee comprised of Board Members to visit the Site once the proposed improvements are constructed and the landscaping is installed, and to inviting the adjacent property owners to be present at the inspection.

41. In response to further questions from the Board, Ms. Venin, the Applicant's Landscape Architect, provided additional testimony regarding the size and location of some of the proposed replacement trees, noting that the planting heights for certain plantings near the western portion of the driveway were increased from 6 to 8 feet to 8 to 10 feet. On questioning as to whether tree removal is proposed, Ms. Venin advised that there are dead trees and bamboo that will be removed, and that the Applicant is proposing 270 replacement trees.

42. Mr. Lehrer stated that the Applicant would stipulate to complying with all of the comments and recommendations set forth in the review memoranda submitted by all of the Board's Professionals, as well as the conditions stipulated to by, and on behalf of, the Applicant during the Applicant's presentations to the Board.

43. Brian G. Lawrence, President and CEO of Fellowship Senior Living ("FSL"), having an address of 8000 Fellowship Road, Basking Ridge, New Jersey, telephoned in via video chat (Duo) and was duly sworn according to law. Mr. Lawrence questioned the need for an additional senior living facility in the area. The Board noted that FSL could be considered a competitor to the proposed ALF and was advised to give Mr. Lawrence's comments the appropriate weight. Mr. Lawrence subsequently rejoined the hearing via Duo to provide additional information about the operations of FSL.

44. Todd Edelstein, having an address of 172 Riverside Drive, was duly sworn according to law and expressed concern, as a retired police officer, about traffic safety. He suggested that, if the County did not change the double striping on Valley Road to create an opening, left turns in, and out, of the proposed facility should be prohibited.

45. No other member of the public commented on the Applicant's proposal.

DECISION

46. After reviewing the evidence submitted, the Board, by a vote of 6 to 1, finds that the Applicant has satisfied its burden of demonstrating an entitlement to the requested preliminary and final site plan approval and all of the d(3) conditional use and bulk variance, and site plan exception/design waiver relief, sought for the subject application for development.

The d(3) Conditional Use Variance Relief – Positive Criteria:

47. As to the required d(3) variance relief, pursuant to Section 21-12.3.m of the Land Use Ordinance, for nonconforming conditions relating to (1) the location of an ALF (required to be located on King George Road, whereas it is located on Valley Road), (2) the minimum lot frontage and width (500 feet required; 440.17 foot frontage and 427 foot width proposed), and (3) the fence height (6 feet permitted; 8 feet proposed), the Board finds that, consistent with the standard set forth in Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), the Applicant has established that the Site can accommodate the detriments associated with the proposed use despite the violation of those conditions.

48. Initially, the Board recognizes that ALFs, such as the subject facility, constitute inherently beneficial uses that presumptively satisfy the positive criteria required for a d(1) use variance. In this regard, the Board concurs with the undisputed expert testimony of the Applicant's professional planner, Mr. Phillips. The Board recognizes that, in Jayber, Inc. v. Municipal Council of Tp. of West Orange, 238 N.J. Super. 165, the appellate court held that a proposed senior citizen congregate care housing facility advanced the senior citizen housing purpose of N.J.S.A. 40:55D-2(l) and constituted an inherently beneficial use in that it promotes the general welfare. The Jayber Court went on to state that the aging population and special housing needs of the elderly, regardless of their individual financial resources, are matters of general welfare.

49. Here, the Board recognizes that, because ALFs are a conditional use that would otherwise be permitted in the absence of any deviation from the enumerated conditions, the Applicant need not satisfy the more stringent use variance relief standards set forth in N.J.S.A. 40:55D-70(d)(1) and Medici v. BPR Co., 107 N.J. 1 (1987), but rather, need only demonstrate that, in accordance with N.J.S.A. 40:55D-70(d)(3) and Coventry Square, that the Site can

accommodate the detriments associated with the proposed use notwithstanding the proposed deviations from three (3) conditions set forth in Section 21-12.3.m of the Ordinance.

50. First, as to the location of the ALF on Valley Road, rather than King George Road as required by the condition, the Board finds that the proposed location will accommodate the detriment associated with the proposed ALF, particularly since the ALF is located at the point where King George Road and Valley Road converge. The Board notes that both Valley Road and King George Road are County roads, and both have the same access to major thoroughfares in the Township.

51. Second, as to the deficient lot width/frontage, the Board finds that the Applicant has demonstrated that the proposed lot width/frontage is largely conforming in that it is within 85-90% of the required lot width/frontage. The Board notes that the Applicant is only proposing one main entrance and, therefore, the slightly deficient lot width/frontage can accommodate same.

52. Third, as to the excessive height of the proposed fence around the courtyard associated with the memory care units, the Board recognizes that the increased height is necessary to ensure resident safety and notes that the fence itself will largely be concealed by the building and the significant landscape screening.

53. Moreover, pursuant to Section 21-12.2 of the Land Development Ordinance, the Board has considered and finds that the proposal does not conflict with the following provisions:

- A. Preservation of existing natural resources on the site.
- B. Safe and efficient vehicular and pedestrian circulation, parking, and loading.

- C. Proposed screening, landscaping, and locations of the structures and exterior lighting; and
- D. The exterior design of the proposed building and the proposed development of the site as a whole conform as much as possible to surrounding building and development and to such development as is permitted by right within the zone.

54. In sum, the Board finds that the Applicant has satisfied the positive criteria required for the grant of all of the requisite d(3) conditional use variance relief.

The d(3) Conditional Use Variance Relief – Negative Criteria:

55. The Board further finds that the Applicant has satisfied the negative criteria for a d(3) conditional use variance, by demonstrating 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. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the “substantial impairment” prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation of the governing body and planning board authority.

56. In reaching its determination that the Applicant has demonstrated the negative criteria, the Board concurs with the undisputed testimony of the Applicant’s professional planner, Mr. Phillips, that it must weigh the factors outlined in Sica, supra, 127 N.J. at 166, to determine whether “on balance, the grant of a variance would cause a substantial detriment to the public good.” The Sica balancing test requires the following analysis: First, the Board should identify the public interest at stake. . . Second, the Board should identify the detrimental effect that will ensue from the grant of the variance. . . Third, in some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use. . . Fourth, the

[b]oard should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

57. Here, as to the first factor outlined in Sica, the Board identifies the public interest at stake is providing specialized senior housing and finds that such public interest is sufficiently compelling where, as here, many of Baby Boomers are in their 70s and will need specialized housing and memory care. Additionally, the Board finds that the Applicant demonstrated that Bernards' population of residents over age 55 has steadily increased and that there is an increased demand for assisted living facilities. The Board accepts the Applicant's professional planner's testimony that Alzheimer's Disease has become more prevalent and that specialized memory care facilities will also become more necessary. The Board also accepts Mr. Phillips' testimony that the Master Plan recognizes the importance of providing special needs care facilities to meet the needs of the population.

58. As to the second factor, the Board accepts Mr. Phillips' testimony that the proposed development will not result in significant detrimental impact because the proposed location is ideal for the proposed use. The location is such that the proposed use will not result in a significant increase in traffic, particularly since the residents of the assisted living facility do not drive and employee shift changes take place during non-peak traffic hours. The Applicant is not adding any additional ingress or egress points along Valley Road aside from the proposed two-way driveway. Additionally, although the Site is located adjacent to two existing residential uses, given the existing and proposed landscape buffering, the proposal will not have any significant detrimental impact on established residences in the area. Finally, the Board recognizes that any potential detriment associated with the potential increase in the need for

emergency services will be mitigated by the Applicant's agreement to contract with third-party providers for same.

59. As to the third factor, the Board accepts Mr. Phillips' testimony that the stipulated to conditions will mitigate the potential detrimental impact. Here, the Board recognizes that the Applicant has designed the project in such a way as to minimize the impact on the adjacent properties, particularly given the existing and proposed landscaping buffer, and the architectural design of the proposed ALF, such that it will be consistent with the existing neighborhood. In this regard, the Board recognizes that the Applicant has stipulated to inviting the most affected neighbors to the inspection to be done by the Landscape Committee, to ensure that the landscaping provided sufficiently screens their view of the ALF. Additionally, the Board recognizes that the Fire Department no longer has concerns about the proposal. The Board concurs with Mr. Phillips' unrefuted expert testimony that the conditions stipulated to by the Applicant will sufficiently mitigate the relatively modest detriment associated with the Applicant's proposal.

60. As to the fourth factor, the Board concurs with Mr. Phillips' expert testimony that, on balance, the proposal will not result in substantial detriment to the public good. Here, the Board recognizes that the Applicant has made modifications to the initial proposal to improve emergency personnel access to the entirety of the Site. The Board further recognizes that the Applicant has stipulated to complying with the comments and recommendations from the Board professionals. On balance, the Board finds that the significant benefits associated with providing specialized senior housing for members of the community substantially outweigh the relatively modest detriment associated with the Applicant's proposal.

61. As such, the Board finds that the Applicant has satisfied its burden of proving the negative criteria. In this regard, the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and that the variance relief sought is not inconsistent with the intent and purpose of the Master Plan and the applicable provisions of the Land Development Ordinance. The Board finds that the proposed ALF will not be a substantial detriment to the character of the neighborhood and, in fact, the aesthetically pleasing design of the building will add to the character of the neighborhood. As such, the Board finds that the Applicant has satisfied both the positive and negative criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(d)(3).

The c(2) Variance Relief - Positive Criteria:

62. As to the positive criteria under the “(c)(2)” or “flexible c” variance analysis for the requested excessive fence height deviation for the fencing around the proposed Memory Care courtyard, the Board finds that the Applicant has demonstrated that the purposes of the MLUL will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. Specifically, the Board finds that the Applicant has demonstrated that the proposal advances purposes (a), (c), (g), (i), of Section 2 of the MLUL, because the proposal promotes the general welfare, provides adequate light, air, and open space, provides sufficient space in an appropriate location, and promotes a desirable visual environment. In this regard, the Board recognizes that the proposed fence is located in the rear of the building and will be screened by the building itself, as well as the proposed landscaping. The Board further finds that the Applicant has demonstrated the benefits associated with granting the requested fence height variance relief will substantially outweigh the modest detriment associated therewith, particularly since the

increased fence height will ensure that residents of the Memory Care portion of the ALF will be safe and will not be able to wander from the Site. As such, the Board finds that the Applicant has demonstrated the positive criteria for the requested fence height variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

The c(2) Variance Relief – Negative Criteria:

63. The Board next finds that the Applicant has satisfied the negative criteria for the requested fence height variance relief by demonstrating that the requested variance 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.

64. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The Board finds that the Applicant has demonstrated that the proposed fence will not be out of character with the neighborhood particularly given the location of the proposed fence to the rear of the building. Further, given the stipulated to conditions and the fact that no member of the public objected specifically to the proposed fencing, the Board finds that any potential detrimental impact to the surrounding neighborhood is sufficiently mitigated not only by the location of the proposed fence, but also by the existing and proposed landscape screening.

65. The focus of the “substantial impairment” prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation of the governing body and planning board authority to zone. Here, the Board recognizes that an ALF is a permitted conditional use in the R-6 Residential Zone, and the development proposal is not inconsistent with the goals and objectives of the Township Master Plan. As such, the Board finds that the

Applicant has satisfied both the positive and negative criteria for the requested fence height variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

The Site Plan Exception Relief:

66. The Board recognizes that, pursuant to Section 21-34 of the Land Development Ordinance, an exception may be granted from the Ordinance requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions of such approval if the literal enforcement of one or more provisions of the ordinance is impracticable or would exact undue hardship because of peculiar conditions pertaining to the land in question.

67. As to the excessive spacing of the lighting fixtures and the excessive average illumination levels, the Board recognizes that it is important for residents and employees to have a well-lit entrance and sidewalks, particularly since many of the residents will be older. The Board concurs with the Applicant's testimony that the increased lighting is necessary and finds that the relatively modest detriment associated with same is mitigated by the design of the fixtures, such that the source of the light is shielded, and the Applicant's stipulation to reducing exterior lighting by 75% after 10:00 PM. The Board accepts the Applicant's testimony that the nearest developments will not be significantly impacted by the proposed lighting, given the existing and proposed landscape screening and the location of the building.

68. As to the width of the fire lane, the Board recognizes that the Fire Department has reviewed the Applicant's proposal and had no objection to same. The Board also recognizes that the Applicant modified the initial proposal so as to improve emergency personnel access by providing mountable curbs and striping the fire lane wherever parking stalls are not provided.

69. As such, the Board finds that the Applicant has demonstrated that the requested relief is reasonable within the general purpose and intent of the provisions of such approval and

that the literal enforcement of the subject provisions of the Ordinance is impracticable and would exact undue hardship because of the peculiar conditions affecting the Property.

The Preliminary and Final Site Plan Approval:

70. The Board further finds that the Applicant has complied with the requirements set forth in Section 21-54 of the Land Development Ordinance. As such, the Board finds that good cause exists for granting the application for preliminary and final site plan approval, subject to the conditions of approval set forth below.

WHEREAS, the Board took action on this application at its meeting on May 13, 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, that the application of BPS BASKING RIDGE PROJECT GP, LP, d/b/a **BRAEMAR PARTNERS**, for preliminary and final site plan approval, subsection d(3) conditional use and bulk variance relief, and site plan exception 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 make the following amendments to the plans:
 - i. Sheet 1 – Amend the Sheet Index to include the architectural plans and the survey;
 - ii. Sheet 2 – Revise the zoning table and related notes to be consistent with the variances and exceptions listed above, and to address the following:
 - a. The lot area specified in the zoning schedule (11.69 acres) conflicts with the lot area specified on the survey (11.735 acres);

- b. Identify the square footage of floor area used to calculate the proposed floor area ratio;
 - c. The minimum distance between residential buildings and other buildings requirement is not applicable; and
 - d. The minimum distance between accessory buildings and the principal building requirement applies to the covered dumpster enclosure.
- iii. Sheet 2 – Add a table/information showing compliance with the required numbers of handicapped parking spaces and loading spaces;
- iv. Sheet 2 – Show the location of the proposed flag pole, which is detailed on Sheet 19;
- v. Sheet 2 – Add a note stating: “Accessible routes from the handicapped parking spaces into the building shall comply with the New Jersey Uniform Construction Code. In the event an improvement designed for handicapped accessibility is not subject to the NJUCC, the Applicant’s engineer shall certify that the improvement has been constructed in compliance with all applicable standards and guidelines of the Americans with Disabilities Act, prior to final approval by the Township;”
- vi. Sheet 2, etc. – Revise the van accessible handicapped parking space to be 11 feet wide, and the access aisle to be 5 feet wide;
- vii. Sheet 2, etc. – Show lines representing the minimum 50 foot wide buffers required pursuant to Section 21-12.3.m.11 of the Ordinance. If necessary, the locations of six proposed light fixtures shall be adjusted so as not to encroach on the westerly buffer;
- viii. Sheet 8 – In the Landscape Requirements chart, address the following:
 - a. The minimum required amount of preserved tree canopy is 40% ; and
 - b. The number of proposed replacement trees specified in the Landscape Requirements chart (270) conflicts with the number specified in the Plant List on sheet 10 (279).
- ix. Sheet 8 – Address adequacy of the proposed 24 inch – 36 inch high cherry laurel plantings to screen the 5’-4” high water hot box enclosure proposed near Valley Road;
- x. Sheet 9 – Revise the Replacement of Trees table so that the first two size ranges in the first column are <10 inches and 10 inches to 12 inches. Also, show the multipliers that produce the numbers in the third column;

- xi. Sheet 9 – Add the following tree removal and protection notes:
 - a. All construction activity shall comply with the tree removal and protection standards of Section 21-45;
 - b. If during construction, it is determined by the Applicant and the Township Engineer that a tree designated for removal can be preserved, said tree shall be protected in accordance with Township standards. Appropriate credit shall be given toward the tree replacement requirements if the tree is preserved; and
 - c. If during construction, it is determined by the Township Engineer that a tree designated for preservation cannot be protected in accordance with Township standards, the tree shall be removed and replacement trees shall be required.
 - xii. Sheets 12 & 13 – For light fixture “A”, reconcile the pole height specified in the Lighting Schedule and Light Pole detail (13 feet) with the height specified in the Lighting Legend (12 feet);
 - xiii. Sheet 16 – On this sheet, or on a new sheet that shows the entire site, show all environmentally constrained areas including wetlands, wetlands transition areas, flood hazard areas, riparian zones, and stream buffer conservation areas;
 - xiv. Floor Plans – Provide a chart(s) showing the total floor area broken down by floor, and the total number of units broken down by type of unit and number of beds for each floor;
 - xv. Floor Plans – Add a note stating there will be no basement, or stating that any basement space shall be used only for utilities and storage;
 - xvi. Building Elevations – Show a north arrow, and label each elevation as to front, side or rear;
 - xvii. Building Elevations – Show any proposed roof-mounted utility equipment, with means of screening, or add a note stating there shall be no roof-mounted utility equipment; and
 - xviii. Building Elevations – Label colors of all exterior building materials.
- (3) Pursuant to Section 3-17 of the Township’s General Ordinances, the Applicant shall provide private ambulance services for the treatment and transport of patients in need of nonemergency medical care;

- (4) Pursuant to Section 3-9.1 of the Township's General Ordinances, permitted hours of construction activities shall be 7:00 AM to 7:00 PM, Monday through Friday, and 8:00 AM to 5:00 PM on Saturday. Construction activities are not permitted on Sundays or holidays;
- (5) All wetlands and wetlands transition areas, as approved by NJDEP, shall be contained within a wetlands conservation easement deeded to the Township. The easement boundary shall be delineated with Township standard marker signs, which shall be installed, or bonded, prior to issuance of a construction permit;
- (6) All stream buffer conservation areas shall be contained within a stream buffer conservation easement deeded to the Township. If the entire stream buffer conservation area is contained within the area of the required (and more restrictive) wetlands conservation easement, a stream buffer conservation easement shall not be necessary;
- (7) A stormwater management easement deeded to the Township shall be provided for the proposed stormwater management facilities. The easement shall include the submitted Stormwater Maintenance Manual, after review and approval of the manual by the Board Engineer;
- (8) A greenway/public access easement shall be provided at the rear of the Property, consistent with the Bicycle, Pedestrian and Greenway Plan of the Township Master Plan. This easement shall encompass all land within 50 feet of the banks of the Passaic River and the unnamed tributary to the Passaic River;
- (9) The Applicant shall file a deed of lot consolidation, merging existing Lots 22 and 23 into one lot. The deed of lot consolidation, which shall identify the new merged lot as Lot 22.01, shall be subject to review and approval by the Township Engineer and Township Attorney and shall be filed with the Somerset County Clerk prior to issuance of a construction permit;
- (10) All required easements, and any other legal documents required by the Board, shall be prepared by the Township Attorney, or by the Applicant's attorney, at the discretion of the Township Attorney. All documents, including appropriate legal descriptions and map exhibits, shall be subject to review and approval by the Township Engineer and Township Attorney, and shall be executed by the Applicant and recorded with the Somerset County Clerk prior to issuance of a construction permit;
- (11) The Applicant shall make each of the existing dwellings available to the Liberty Corner Fire Company in the event it wishes to run drills on the Site, with notice given to the Fire Company at least 30 days prior to the demolition date of the each dwelling;

- (12) Striping shall be added for the driveway throats for a minimum of 50 feet back from each stop bar;
- (13) The proposed retaining walls shall be labeled on the site plan;
- (14) The proposed vehicle access to the detention basin includes a 4 foot wide sidewalk and an adjacent 6 foot wide grass paver. The sidewalk adjacent to the grass paver shall be constructed akin to a concrete driveway apron, i.e. 6 inches thick with welded wire fabric. Also, the Applicant's engineer shall indicate if a pick-up truck can make the sharp 90 degree turn on the narrow 10 foot wide access;
- (15) The site plan shall depict the buffer averaging areas and summary that is depicted on the ETI submission;
- (16) Additional spot grades shall be required at the top and bottom of each proposed accessible ramp to ensure compliance with ADA;
- (17) Additional spot grades shall be required on the detention basin berm and what appears to be an emergency spillway graded into the berm of the detention basin;
- (18) The Applicant shall extend the proposed timber guiderail to the east and west to shadow the proposed detention basin and extend to the proposed dumpster area, where the slopes are similar to the area that is currently shown to be protected;
- (19) The utility plan shall note the size of the proposed dry water line to be used as a Fire Department Connection;
- (20) The Applicant shall revise the Site Plans, specifically, Detail Sheet I-691, which depicts a bench, to clarify the location of the proposed bench;
- (21) The sequence of construction on the SESC plan shall clearly indicate the construction of the sand filter. This feature shall be constructed following stabilization of the entire development site, in order to prevent sediments from migrating into the basin and compromising the permeability of the sand filter media;
- (22) The retaining wall detail note shall be expanded to indicate that the wall design shall be submitted for review and approval by the Township Engineer prior to construction;
- (23) The Applicant shall revise the Site Plans, specifically Detail Sheet C-902, which depicts a flag pole, to clarify the location of said flag pole;
- (24) The stormwater management design for the site includes a large approximately 25,000 square foot above ground basin designed to both provide water quantity and quality control. Water quality is proposed to be addressed by the use of a large un-

vegetated sand filter that comprises the bottom of the detention basin. The methodologies employed are in line with the stormwater management rules for quantity and quality control. However, the report also indicates that based on geo-tech testing done in the detention basin, the in-situ soils will not provide recharge due to lack of permeability. The report concludes that no recharge design is required for the proposed conditions since no recharge is currently occurring. The problem with this assessment is that the geo-tech testing was done in area of HSG "D" soil which is where the proposed basin is located. The vast bulk of the site improvements are located on HSG "C" soils, which were apparently not subjected to any permeability testing. The recharge requirement cannot be waived based on permeability testing in a soil type that represents a small portion of the site. Appendix E of the BMP requires that designers utilize the Soil Survey parameters and default soil types unless additional soil testing is performed to establish a different HSG determination. The Applicant shall either provide a recharge design or comply with the testing requirements of Appendix E of the BMP;

- (25) The discharge curve for the proposed 9 inch orifice has an anomalous shape which appears to indicate a sever reduction in discharge rate above elevation 243. The Applicant's engineer shall amend the plans to clarify this anomaly and verify that the discharge modeling is correct;
- (26) The stormwater calculations indicate a 100 year water surface elevation of 243.98 in the basin. However, the basin grading appears to show elevations less than 244 along the berm, which would negate these results. The Applicant shall clarify said calculations. The detention basin design requires a minimum of 1 foot of freeboard above the 100 year basin water surface, with the emergency spillway flowing full which is not consistent with the current design. The Applicant shall revise the basin contouring in order to meet the freeboard condition;
- (27) It is not certain what the design proposes to utilize as an emergency spillway. The outlet control box should not be utilized as an emergency spill way due to the relatively small size of the 12 inch discharge pipe. There appears to be an emergency spillway graded into the top of the basin, but no elevations are given. The Applicant shall amend the plans to clarify same. If an emergency spillway is constructed through the basin, the downstream side of the basin shall be stabilized with reno mattress or other such stabilizing measure to preclude erosion and potential failure of the basin;
- (28) The Applicant shall comply with all recommendations of Chief Blanchard of the Liberty Corner Fire Company, including, but not limited to;
 - a. All curbing installed on the Property shall be mountable curbing specifically where the parking lot and entrance are curbed. Mountable curbing is not needed where there are parking spaces unless the parking spaces lead into a

curved area;

- b. No Parking Fire Lanes shall be provided entirely around the building/Property where no parking spaces are shown on the plans;
 - c. The Applicant shall demonstrate by calculation that an 8 inch water line is adequate to supply the full fire load for the project;
 - d. The Applicant shall utilize noncombustible construction consisting of either CMU walls or light gauge steel instead of wood and, at a minimum, the building shall have a full NFPA sprinkler system, rather than a residential system; and
 - e. The emergency generator shall be sized to run the entire facility, including air conditioning, heating and elevators as it will be very difficult to evacuate residents if power is lost.
- (29) The Applicant shall comply with all recommendations of Mark Sylvester, the Fire Official, including, but not limited to:
- a. The Applicant shall register the building with the New Jersey Division of Fire Safety as a Life Hazard Use and said registration shall be completed prior to the opening of the facility and in conjunction with the advice of the Fire Official;
 - b. The Applicant shall permit a walk-through of the building prior to the completion of construction to allow for emergency pre-planning by the Fire Company;
 - c. The new curbs being added in areas of the Fire Department Connect and by both fire hydrants shall be mountable;
 - d. The fire alarm system shall have a remote fire alarm panel inside the main entrance;
 - e. A framed map is required next to the fire alarm panel at the main entrance showing each floor's layout, including stairwells, exit doors, and fire alarm and fire sprinkler system controls;
 - f. A large Knox Box is required to the left of the main entrance and the box shall be ordered through the Fire Official prior to the completion of construction. Keys to all outside doors, all inside locked spaces, fire alarm pull stations and fire alarm panels required to be inside the box. Two sets of interior keys shall be required to coincide with the number of floors in the building and any and all codes for door locks and for silencing and resetting

the fire alarm shall be included inside the box; and

- g. The Applicant shall submit a letter to the Fire Official addressing how carbon monoxide detention will be addressed in the building.
- (30) The Applicant shall ensure that the elevator will accommodate the Liberty Corner First Aid Squad's 80 inch cot;
 - (31) The applicant shall revise the plans to reflect the various exhibits and supplemental materials submitted to the Board during the course of the hearing, including the generator specifications, Alternate Driveway Exhibit (sheet 1 dated April 26, 2021), Fire Service Plan (sheet EXB-101 dated April 23, 2021), Landscape Plan (sheet L-601 last revised April 28, 2021), Landscape Sections Exhibit (sheets L-601A & L-601B last revised April 28, 2021), and lighting fixture cut sheets (Exhibit A-6);
 - (32) The Applicant shall obtain approval from the County of Somerset Planning Board and proof of same shall be submitted to the Township Engineering Department. At no time shall the Applicant request of Somerset County that a traffic signal be installed along Valley Road;
 - (33) Third-party service providers (stylists, barbers, etc.) shall not be permitted to advertise their services to members of the general public and same shall be set forth in any agreement between the Applicant and said third-party service providers, same to be subject to the review and approval of the Township and/or Board Attorney;
 - (34) The Applicant shall schedule trash removal and deliveries between the hours of 10:00 AM and 3:00 PM;
 - (35) The Applicant shall allow the Board's Landscape Committee, as well as the adjacent residential neighbors, to participate in an inspection of the landscaping, post installation of same, to ensure that sufficient landscape buffering is provided between the ALF and the adjacent properties. It shall be the responsibility of the applicant to provide written notice to the adjacent property owners of the date and time of the inspection at least ten days prior to the inspection. The applicant shall provide additional plantings and/or make other changes to the landscaping as deemed necessary and appropriate by the landscaping committee to achieve sufficient landscape buffering, prior to issuance of a certificate of occupancy, and all in accordance with the Board's Rules and Regulations;
 - (36) Prior to issuance of a certificate of occupancy, the Applicant shall submit to the Township Engineering Department written certification that all installed exterior lighting is in accordance with the lighting shown on the approved plans;
 - (37) The Soil Erosion and Sediment Control Plan shall be subject to the approval of the Somerset-Union Soil Conservation District.

- (38) The Applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity.
- (39) The Applicant shall comply with all applicable Affordable Housing requirements, including, but not limited to, the requirement that 10% of the proposed number of beds (here, 10 beds) shall be designated as Medicaid eligible beds;
- (40) The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State.
- (41) The Applicant shall obtain permits and/or approvals from all applicable agencies and/or department;
- (42) 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;
- (43) The Applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department;
- (44) Pursuant to the Board's Rules and Regulations, the following time limitation conditions shall apply.
 - a. Revisions to Plans. Revisions to the submitted plans and other documents, as required as conditions of approval, shall be made, and the plans signed by the Board Secretary, within six (6) months of the adoption of the Board's resolution. In the event that the applicant fails to make the revisions as required and/or fails to obtain signatures on the plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void; and
 - b. Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy. The Applicant shall apply for and obtain a construction permit within two (2) years of the adoption of the Board's resolution. If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The Applicant shall also have one (1) year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one (1) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall

automatically expire and become null and void.

ROLL CALL VOTE:

Those in Favor: Breslin, Cambria, Kraus

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 June 9, 2021.



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

Dated: June 9, 2021