

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v2
Regular Meeting
August 4, 2021

CALL TO ORDER

Vice Chairwoman Genirs called the meeting to order at 7:32 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Vice Chairwoman Genirs 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.

Chairman Breslin entered the courtroom at 7:34 PM.

ROLL CALL:

Members Present: Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: Agarwal
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

APPROVAL OF MINUTES

July 7, 2021 – Regular Session – On motion by Ms. Pochtar, seconded by Ms. Genirs, all eligible in favor and carried, the minutes were adopted as drafted. Abstentions: Cambria, Kraus (all absent)

APPROVAL OF RESOLUTIONS

Lembo, Matthew J.; Block 708, Lot 5; 17 Tysley Street; ZB21-016 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Baumann seconded.

Roll call: Aye: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi
 Nay: NONE
 Abstain: Cambria, Kraus (all absent)

Motion carried.

Laird, T./Querrazzi, J.; Block 7801, Lot 20; 20 Lurline Drive; ZB21-017 (approved) - Ms. Baumann moved approval of the resolution as drafted. Ms. Pochtar seconded.

Roll call: Aye: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi
 Nay: NONE
 Abstain: Cambria, Kraus (all absent)

Motion carried.

DiNardo, Carmine & Cynthia; Block 8101, Lot 9; 282 Stonehouse Road; ZB20-017 (approved) - Mr. Tancredi moved approval of the resolution as drafted. Ms. Baumann seconded.

Roll call: Aye: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi
 Nay: NONE
 Abstain: Cambria, Kraus (all absent)

Motion carried.

[Trinks, Uwe](#); Block 11601, Lot 30; 50 Long Road; ZB21-018 (approved) – Ms. Pochtar moved approval of the resolution as drafted. Ms. Baumann seconded.

Roll call:	Aye:	Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Cambria, Kraus (all absent)

Motion carried.

[Porr, Michael & Wendy](#); Block 1611, Lot 48; 10 Prospect Avenue; ZB21-023 (denial-pool) – Ms. Genirs moved approval of the portion of the resolution addressing variance relief for the pool as drafted. Ms. Pochtar seconded.

Roll call:	Aye:	Genirs, Pavlosky, Pochtar
	Nay:	NONE
	Abstain:	Cambria, Kraus (all absent)
	Ineligible:	Baumann, Breslin, Tancredi

Motion carried.

[Porr, Michael & Wendy](#); Block 1611, Lot 48; 10 Prospect Avenue; ZB21-023 (approval-shed) – Mr. Tancredi moved approval of the portion of the resolution addressing variance relief for the shed as drafted. Ms. Genirs seconded.

Roll call:	Aye:	Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Cambria, Kraus (all absent)

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Caesar, Albert & Stephanie; Block 5302, Lot 3; 24 Post Terrace; Bulk Variance; ZB21-022

Present:	Jay M. Petrillo, AIA, Architect for the Applicants Albert & Stephanie Caesar, Applicants
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Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Caesar, Ms. Caesar, Mr. Petrillo, Mr. Quinn and Mr. Schley were duly sworn.

Albert Caesar, Applicant residing at 24 Post Terrace, testified that the proposed project, construction of a second floor addition above the existing two-car garage on the south side of the existing dwelling, requires relief for a minimum rear yard setback deviation. He stated that, in 2014, this Board had granted a rear yard setback variance permitting a one-story addition that reduced the pre-existing rear yard from 53' to 45' (ZB14-007) and because the current proposed addition is entirely within the existing building footprint, it does not exacerbate that deviation. Finally, Mr. Caesar explained that the new addition would contain a bedroom, a bathroom and a home office.

Jay M. Petrillo, AIA, architect with a business address in Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture. He testified that the photos submitted with the application were taken by him sometime in April of 2021 and that they accurately depict the property as it currently exists. He gave a short description of the project, affirming that there would be no land disturbance or new impervious coverage created since the addition would be built entirely above the existing garage. Noting that the subject property is substandard in size, irregularly shaped and has two front yards, he stated that the majority of the existing dwelling is outside of the building envelope and any addition would require variance relief. Stipulating that the addition would be substantially similar in color, style and architecture design to the existing dwelling and surrounding neighborhood, he addressed the comments in Mr. Schley's memo dated 07/29/2021 and Mr. Quinn's memo dated 07/30/2021 to the Board's satisfaction. Finally, he opined that the addition would be an improvement to the existing dwelling without any detriment to the surrounding neighborhood.

Stephanie Caesar, Applicant residing at 24 Post Terrace, testified that she had spoken to several of the neighbors and had received favorable comments about the proposed project.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

No summary was offered.

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

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Weisfelner, B./Jackson, R.; Block 9501, Lot 37; 22 High Meadow Road; Bulk Variance; ZB21-019

Present: Frederick B. Zelle, Esq., Attorney for the Applicants
David E. Fantina, Engineer for the Applicants
Benjamin Weisfelner, Applicant

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 the proposal, removal of an existing patio and installation of an inground swimming pool, patio and future pool house, requires variance relief for the location of the pool which is not to the rear of adjacent dwellings.

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

Benjamin Weisfelner, Applicant residing at 22 High Meadow Road, testified that the pictures submitted with the application were taken by him in the fall of 2020 and that they accurately depict the property as it currently exists. He stipulated that the future pool house/pavilion would be used for storage. Finally, Mr. Weisfelner testified that he had spoken to the adjacent neighbors and hadn't received any negative comments.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions. Hearing none, that portion of the hearing was closed.

David E. Fantina, PE, engineer with a business address of 15 Sunset Drive, Bernardsville, NJ, was accepted by the Board as an expert in the field of civil engineering. He gave a brief description of the property, testifying that, based on a memo from David C. Krueger, Certified Wetland Delineator (06/02/2021), there are no environmental constraints or associated transition areas within the proposed limit of disturbance. Noting that many of the houses in the area have inground pools, he opined that the proposed location of the pool represents a better planning alternative because it is close to the house and requires removal of only a few trees. The only conforming location is far from the house to the rear of the property and in a heavily wooded area. He opined that the existing vegetative buffer between the subject property and the adjacent properties is adequate and stated that stormwater management has been addressed with a drywell. Finally, he stipulated to the comments made in Mr. Schley's memo (07/29/2021) and Mr. Quinn's memo (07/30/2021). Mr. Quinn advised the Applicant that he recommends that an engineer certify the stability of the proposed wall if boulders are used, as is called for in the plans.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

Mr. Zelle did not offer a summary, opining that the testimony presented satisfied the statutory requirements for the Board to grant the requested relief.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for a "c(1)" or "hardship" variance and for a "c(2)" or "benefits outweigh detriments" variance. Ms. Genirs moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's

decision to grant the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Tancredi seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Fabian, Matthew & Michelle; Block 6902, Lot 14; 20 Addison Drive; Bulk Variance; ZB21-021

Present: Frederick B. Zelley, Esq., Attorney for the Applicants
 Allison J. Lapatka, PE, LS, Engineer for the Applicants
 Matthew & Michelle Fabian, Applicants

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

Frederick B. Zelley, Esq., attorney with the firm of *Bisogno, Loeffler and Zelley LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He stated that the proposal, construction of a patio around a recently constructed, previously approved inground swimming pool, requires variance relief for maximum allowable lot coverage. Noting that the patio is already partially completed, Mr. Zelley explained that the Applicants would like to continue the patio around the pool for safety reasons and so that the pool can be appropriately covered in the winter. He added that the Applicants propose to relocate an existing shed to eliminate an existing nonconforming setback from the west side property line. Finally, Mr. Zelley confirmed that the pictures submitted with the application had been taken by him in April of 2021 and that they accurately depict the property as it currently exists.

Matthew Fabian, Applicant residing at 20 Addison Drive, testified that the original construction permit was for the pool only (no surrounding hardscaping or decking) and that he was aware that the pool project would bring the property close to the maximum lot coverage allowable. However, as the pool was used, he observed that the grass surrounding the pool represented a slipping hazard to those exiting the pool. In addition, he was unable to adequately secure the pool cover using the fasteners that had been embedded in that grassy area. When he applied for a Certificate of Occupancy for the pool, he was advised that the patio and wall areas which were subsequently installed without a permit, had brought the project over the maximum allowable lot coverage.

A discussion ensued and the Board suggested potential methods of mitigating the additional coverage such as removing a portion of the driveway and using open decking for the remainder of the pool surround however the Applicants did not feel that either was a viable option.

Allison J. Lapatka, PE, LS, engineer/surveyor with the firm of *Allison Engineering and Land Surveying LLC*, Hewitt, NJ, was accepted by the Board as an expert in the fields of civil engineering and land surveying. She gave a brief description of the property, noting that there are no environmental concerns. She then described the proposed rain garden and asserted that there would be no additional runoff from the property. She added that even if the rain garden failed, any additional runoff would follow the existing drainage pattern along a swale which runs beside the property lines and exits onto Lyons Road, not onto any adjacent properties. Ms. Lapatka confirmed that a stormwater management easement which would include a maintenance manual for the proposed rain garden, would be deeded to the Township and stipulated to all applicable comments in Mr. Schley's memo (07/29/2021) and in Mr. Quinn's memo (07/30/2021).

Mr. Fabian testified that he had spoken to the adjacent neighbors and had heard no negative comments.

Hearing no further questions or comments from the Board, the hearing was opened to the public for questions. Hearing none, that portion of the hearing was closed.

The Board continued its discussion about the amount of additional lot coverage being sought and offered suggestions to the Applicants on ways to help mitigate the overage.

Mr. Zellely asked the Board for a recess in order to confer with his clients.

* * * *The Open Session was recessed at 9:30 PM and reconvened at 9:37 PM.* * * *

Ms. Kiefer conducted a roll call of the Board.

Mr. Zellely advised the Board that the Applicants were willing to reduce the width of new proposed patio area adjacent to the pool to 2.5 feet to accommodate the fasteners for the pool cover and asked for a straw poll to determine if this would satisfy the Board’s concerns. The results were mixed.

Hearing no further questions or comments from the Board, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

Mr. Zellely opined that the testimony presented satisfied the statutory requirements for the Board to grant the requested relief.

After deliberating, Chairman Breslin moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant variance relief as requested by the Applicants under both "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" criteria and subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Cambria seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Verb, G./Williams-Verb, C.; Block 11501, Lots 11 & 12; 33 Long Road; Bulk Variances; ZB21-024

Present: Jordan S. Friedman, Esq., Attorney for the Applicants
 Deborah D’Amico, PE, Engineer for the Applicants
 Gregori Verb, Applicant

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

Jordan S. Friedman, Esq., attorney with the firm of *Vastola and Sullivan*, Middlesex, NJ, entered his appearance on behalf of the Applicants. He stated that the proposal, construction of an inground swimming pool with an adjoining waterfall/slide feature, a pool house, patios and walkways, requires variance relief for the pool location which is in the front yard and not to the rear of adjacent dwellings. Noting that the site is comprised of two (2) adjoining lots which will be merged into one (1) lot as part of this application, Mr. Friedman stated that the merger would eliminate a pre-existing side yard nonconformity and a previously approved driveway setback nonconformity.

Gregori Verb, Applicant residing at 33 Long Road, testified that the application site is heavily wooded and significantly constrained by environmental issues such as streams, steep slopes and wetlands, all of which dictated the placement of the existing dwelling and proposed pool and pool house. He confirmed that the photos submitted with the application were taken by him approximately 2.5 months ago and that they accurately depict the property as it currently exists. He asserted that the proposed pool would not be visible from any of the adjacent properties or from Long Road because of the trees and because of the large distances between his house and the adjacent homes. He addressed the applicable comments in Mr. Schley’s memo (07/29/2021) to the Board’s satisfaction, noting that the cupola on the pool house is ornamental in nature and is meant, in part, to hide the chimney.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions. Hearing none, that portion of the hearing was closed.

Deborah D’Amico, PE, engineer with the firm of *D’Amico Engineering LLC*, Somerville, NJ, was accepted by the Board as an expert in the field of civil engineering. She described the environmental constraints on the property and the

effect that they had had on the location of the pool. Finally, she addressed the remaining comments in Mr. Schley’s memo (07/29/2021) and in Mr. Quinn’s memo (07/30/2021) to the satisfaction of the Board and stipulated, as conditions of approval, to all applicable items in the memos.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions and comments. Hearing none, that portion of the hearing was closed.

In summary, Mr. Friedman stated that the proposed project is an appropriate use for the property, fits in with the neighborhood and will have minimal impact on the adjacent properties. He added that two (2) existing deviances will be eliminated by merging the two (2) subject properties and opined that the testimony provided by Mr. Verb and Ms. D’Amico served to satisfy the statutory requirements for the Board to grant the requested relief.

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

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

Motion carried.

COMMENTS FROM MEMBERS OR STAFF

After a brief discussion, the Board decided to maintain the 7:30 PM meeting start time for the remainder of the year.

ADJOURN

Moved by Mr. Kraus, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 10:44 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 09-08-2021

08/10/2021 dsaw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**MATTHEW J. LEMBO
Case No. ZB21-016**

RESOLUTION

WHEREAS, **MATTHEW J. LEMBO** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variances in connection with the expansion of the existing 1.5 story dwelling, including renovations on the first floor and the construction of a new second floor, on property identified as Block 708, Lot 5 on the Tax Map, more commonly known as 17 Tysley Street (the “Property”):

1. A variance for a front-yard setback of approximately 28.80 feet, whereas the existing front-yard setback is approximately 28.87 feet, and the required minimum front-yard setback in the R-6 (3/4 acre) residential zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”); and
2. A variance for an existing and proposed side-yard (west) setback of 10.89 feet, whereas the required minimum side-yard setback in the R-6 (3/4 acre) residential zone is 15 feet, pursuant to Section 21-15.1.d.1. and Table 501 of the Ordinance¹; and

WHEREAS, a public hearing on notice was held on such application on July 7, 2021, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

¹ In 2006, the side yard requirements in the R-6 Zone were increased from 15 feet each and 40 feet combined, to 30 feet each and 75 feet combined. The 2006 Ordinance amendment includes a grandfather provision whereby additions may be made to pre-existing dwellings based on the prior side yard requirements, i.e. 15 feet each and 40 feet combined, provided the addition is no closer to the side lot lines than the existing dwelling. Since the Applicant’s proposed addition is no closer to the side lot lines than the existing dwelling, the project is grandfathered and therefore the prior side yard requirements, i.e. 15 feet each and 40 feet combined, shall apply.

1. The Property is a 31,143 square foot (0.715 acre) lot located in the R-6 residential zone with frontage on Tysley Street. It is currently improved with an existing 1.5 story frame dwelling with enclosed porch and wood deck, frame shed, macadam driveway, and associated slate walkways. Approximately one-half of the Applicant's existing dwelling is located within the minimum required front and/or side yard setback areas.

2. The Applicant proposes to expand the existing 1.5 story dwelling, including primarily interior renovations on the first floor and the construction of a new second floor. The first floor renovation includes closing in an existing open porch and creating a master bedroom and 1.5 bathrooms. By squaring off the northeasterly corner of the dwelling, the existing building footprint will be expanded by approximately 8 square feet. The new second floor includes two bedrooms, a study nook, and a bathroom. The proposed addition, including the new second floor and the approximately 8 square feet of new building footprint, provides essentially the same front- and side-yard setbacks as the pre-existing nonconforming dwelling.

3. The Applicant's proposal is depicted on Plans prepared by Robert E. Coleman, R.A., A.I.A., dated March 6, 2021, unrevised, same consisting of five (5) sheets. The Applicant also submitted a compendium of four (4) photographs of the Property, same consisting of four (4) sheets.

4. The requested variances for the front- and side-yard setback deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

5. David Schley, P.P., A.I.C.P, the Township/Board Planner, and Sam Koutsouris, P.E., the Substitute Board Engineer, both were duly sworn according to law.

6. Matthew J. Lembo, the Applicant, having an address of 17 Tysley Street, was duly sworn according to law. He testified that he is trying to create more living space on the second

floor, while still maintaining the character of the dwelling and the neighborhood. He explained that, currently, the second floor is used as attic space and that the improvements will allow him to utilize said space more efficiently. Mr. Lembo further explained that the addition will allow him to construct two bedrooms, a study nook, and a bathroom on the second floor.

7. On questioning, Mr. Lembo confirmed that he had taken the photographs submitted with the application in approximately May or April of 2021 and he confirmed that the photographs constitute accurate depictions of the Property as it currently exists. On further questioning, Mr. Lembo confirmed that the footprint of the dwelling will remain the same except that the front, west corner of the dwelling will be “squared off,” resulting in an 8 square foot expansion.

8. On discussion of the June 25, 2021 Review Memorandum prepared by the Township Planner, Mr. Schley explained that the Applicant is maintaining the existing setbacks except along the front/west corner of the dwelling where the dwelling is being “squared off”, which will result in an additional less than one inch of encroachment into the required front-yard setback. Mr. Schley noted that multiple dwellings on Tysley Street have non-conforming front- and side-yard setbacks, and he opined that the Applicant’s requested relief is reasonable given the lack of an existing neighborhood pattern. Mr. Schley explained that the proposal requires a stream buffer easement, but that said easement would have been required even if the Applicant’s proposal did not require variance relief.

9. On questioning, Mr. Lembo testified that he does not intend to completely demolish the dwelling and confirmed that the proposed improvements require only a partial demolition of the existing dwelling. Mr. Schley advised that, if there is a need for demolition beyond what is shown on the plans, then the Applicant may be required to return to the Board as same may exceed the permitted “partial” destruction as set forth in Section 21-11.2.b of the Ordinance. Mr. Lembo

acknowledged same. The Board Engineer, Mr. Koutsouris, confirmed that he had not prepared a review memorandum and he did not have any questions as to the proposal.

10. On questioning, Mr. Lembo testified that he spoke with the closest, most affected neighbor, and that said neighbor did not have any objections to the proposal. The Applicant stipulated, as a condition of approval, to the exterior of the addition being substantially consistent, as to color, materials, and architectural design, with the exterior of the balance of the existing dwelling. On questioning, Mr. Lembo contended that the proposed second story addition would not render the dwelling substantially out of character with the existing neighborhood, since there are other two-story dwellings in said neighborhood. On further questioning, Mr. Lembo explained that locating the proposed improvements elsewhere on the Property would result in an increase in building coverage, whereas in the proposed location, the coverage is only increasing by 8 square feet.

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

DECISION

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

13. First, under the positive criteria for a subsection “(c)(1)”, or “hardship”, variance, the Board finds that the Applicant has satisfied his burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, him as the owner of the Property. The Board recognizes that the setback deviations are, at least in part, a product of the fact that one-half of the existing dwelling is located

within the minimum required front- and/or side-yard setback areas. The Board further recognizes that the rear of the Property is traversed by Penn's Brook, which has a 75 foot wide stream buffer conservation area along each side of it. The Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. As such, the Board finds that the Applicant has demonstrated the positive criteria for subsection c(1) variance relief.

14. Second, the Board finds the Applicant has also satisfied the positive criteria for a "c(2)" or "flexible c" variance. Specifically, the Board finds that the Applicant has satisfied his 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. In this regard, the Board finds that the Applicant has demonstrated that the proposed development will provide a desirable visual environment, modernize the home, enhance the visual compatibility of the Property with adjoining properties and otherwise promote the general welfare. The Board further finds that the Applicant has demonstrated that the proposal is a better planning alternative, since locating the addition in a conforming location would result in a more significant increase in building coverage. Accordingly, the Board finds that the deviations are relatively modest and the detriments will be alleviated by the stipulated conditions, such that the zoning benefits substantially outweigh the associated detriments. As such, the Board finds that the Applicant has demonstrated the positive criteria for subsection c(2) variance relief.

15. Third, and finally, the Board finds that the Applicant has satisfied the negative criteria; that is, he has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone

plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board finds that the proposed improvements will not render the dwelling out of character with the neighborhood, particularly given the Applicant's testimony that there are multiple two-story dwellings in the neighborhood and that there is no established neighborhood pattern as to the front- and side-yard setbacks. The Board also recognizes in this regard that no member of the public objected to the Applicant's proposal. As to the substantial impairment prong of the negative criteria, the Board finds that the proposed improvements are permitted and certainly do not rise to the level of constituting a rezoning of the Property. As such, the Board finds that the Applicant has demonstrated both the positive criteria and the negative criteria for the requested subsection c(1) and c(2) variance relief.

WHEREAS, the Board took action on this application at its meeting on July 7, 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 4th day of August, 2021, that the application of Matthew J. Lembo, 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 exterior of the proposed addition shall be substantially similar in color, material, and architectural components to the balance of the exterior of the dwelling;
3. The stream buffer conservation area shall be delineated on the plans and contained within a stream buffer conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, executed by the Applicant, and recorded with the Somerset County Clerk's Office prior to issuance of a construction permit;
4. The Applicant's proposal includes partial demolition of the existing dwelling. The Applicant is advised that, if it is later determined that further demolition is necessary or desired, to the extent that the demolition would exceed "partial destruction", as set

forth in Section 21-11.2.b of the Ordinance, the Applicant shall be required to return to the Board for further variance 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 Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on August 4, 2021.



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

Dated: August 4, 2021.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**THERESE L. LAIRD and JOHN QUERRAZZI
Case No. ZB21-017**

RESOLUTION

WHEREAS, **THERESE L. LAIRD and JOHN QUERRAZZI** (the “Applicants”), have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variances in connection with the removal of an existing single-family dwelling and the construction of a new, two-story, single-family dwelling with an attached two-car garage, on property identified as Block 7801, Lot 20 on the official Tax Map, more commonly known as 20 Lurline Drive (the “Property”):

- (1) A variance for a pre-existing lot width of 150 feet, whereas the minimum required lot width in an R-4 (1 acre) residential zone is 200 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”); and
- (2) A variance for a pre-existing improvable lot area of 6,292 square feet, whereas the minimum required improvable lot area in an R-4 (1 acre) residential zone is 10,000 square feet, pursuant to Section 21-10.4.b and Table 401-A of the Ordinance;
- (3) A variance for a front-yard setback of 73 feet, whereas the existing front-yard setback is 69.1 feet, and the minimum required front-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and
- (4) A variance for a driveway setback of 4 feet, whereas the minimum required driveway setback is 5 feet, pursuant to Section 21-38.1.d of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 7, 2021, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board reviewed the application and deemed it to be complete.
2. The Property is an approximately 51,388.8 square foot (1.179 acre) pre-existing undersized (as to lot width and improvable lot area) lot fronting on Lurline Drive. The Property is presently improved with a two-story, single-family dwelling, inground pool with pavers and equipment, play area, and related walkways and driveway. The Applicants propose to remove the existing dwelling (the pool and play area will remain) and construct a 3,268 square foot two-story, single-family dwelling, with four bedrooms and an attached two-car garage. The Applicants also propose to replace the existing paver pool surround with decking.
3. The Applicants' proposal is depicted on a Variance Plan prepared by Catherine A. Mueller, P.E., dated February 17, 2021, unrevised, same consisting of two (2) sheets; and Architectural Plans prepared by Paul J. Rodek, R.A., of J.D.R. Consultants, dated September 22, 2020, unrevised, same consisting of seven (7) sheets. The Applicants also submitted a Survey prepared by Charles E. Saladin, Jr., P.L.S., dated June 17, 2020, unrevised, same consisting of one (1) sheet; a Stormwater Management Report also prepared by Ms. Mueller, P.E., dated February 2021; and a compendium of eleven (11) photographs of the Property.
4. The requested variances for the lot width, front-yard setback, improvable lot area, and driveway setback are governed by the criteria of N.J.S.A. 40:55D-70(c).
5. Frederick B. Zelle, Esq., of Bisogno, Loeffler & Zelle, LLC, entered his appearance on behalf of the Applicants. He summarized the Applicants' proposal and the requested relief. Mr. Zelle contended that the location of the proposed dwelling and associated

improvements are limited by the location of the existing lawfully constructed pool and the existing environmental constraints, which include flood hazard area, stream/riparian buffers, wetlands and wetland transition areas.

6. David Schley, A.I.C.P./P.P., the Township/Board Planner, and Sam Koutsouris, P.E., the Substitute Board Engineer, both were duly sworn according to law.

7. Therese Laird, one of the Applicants, having an address of 20 Lurline Drive, was duly sworn according to law. Ms. Laird testified that the Applicants purchased the Property in 1996 and currently reside there with their 16-year-old daughter. Mr. Zelley advised that, on March 11, 2021, he took the eleven (11) photographs submitted with the application materials and confirmed with Ms. Laird that they constitute accurate depictions of the Property as it presently exists. Ms. Laird provided a description of all of the photographs submitted. She explained that the Applicants are seeking to raze the existing dwelling because it is outdated and certain original systems, such as the electrical and plumbing systems, are starting to fail.

8. On questioning, Ms. Laird advised that the new dwelling will be a colonial-style dwelling. She testified that the Applicants are not removing the existing swimming pool, but are replacing the pavers surrounding the pool with wood or composite decking, which will reduce the amount of impervious coverage in this area.

9. Catherine A. Mueller, P.E., of Page-Mueller Engineering Consultants, PC, having a business address of 5 Powder Horn Drive, Warren, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of civil engineering. Referencing the Plans that she prepared, specifically Sheet 1, Ms. Mueller described the existing conditions. She testified that the Property is improved with a single-family dwelling with an inground pool. Ms. Mueller further testified that the Property has environmental

constraints, including a drainage ditch on the southern side of the Property, a flood hazard area, stream buffers, wetlands and wetland buffer areas.

10. Referencing Sheet 2 of the Plans, Ms. Mueller testified that the new dwelling will be located in the same area as the existing dwelling and, therefore, will not result in disturbance within the flood hazard area, wetlands or wetland buffer areas. She explained that the dwelling will overlap with the riparian buffer, but that the improvements can be constructed within the buffer pursuant to multiple permits-by-rule.

11. Ms. Mueller testified that the proposal results in an increase in the overall impervious coverage of 707 square feet. She explained that the Applicants are proposing a small stormwater management system and confirmed that the post-construction stormwater runoff will not exceed the current runoff conditions.

12. Ms. Mueller explained that the Applicants are seeking variance relief for the existing deficient lot width and improvable lot area, as well as for proposed non-conforming front-yard and driveway setbacks. She contended that the non-conforming front-yard setback is a function of the location of the lawfully constructed pool, since the Applicants wanted to reduce the distance between the pool and the dwelling, while still allowing for sufficient circulation. Ms. Mueller explained that the Applicants could comply with the front-yard setback requirement but that doing so would leave too little room for circulation given the location of the deck and the stairs/landing. She further explained that if the dwelling, and the associated stairs from the deck to the yard, are too close to the pool, same could present a safety issue.

13. As to the non-conforming driveway setback, Ms. Mueller advised that the Applicants had reduced the size of the driveway apron from 30 feet to 28 feet to minimize the driveway. She explained that, while the driveway could be shifted, doing so would place the

dwelling closer to the wetland buffer and likely result in additional disturbance. Ms. Mueller contended that having two driveways adjacent to each other would not result in significant detriment because the location of the driveways serve to mitigate noise from the neighboring homeowners.

14. On discussion of the June 25, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley, the Applicants stipulated, as conditions of approval, to complying with all of the comments and requirements set forth therein. On questioning, Ms. Mueller testified that she does not anticipate any tree removal, but she stipulated, on behalf of the Applicants, to obtaining the necessary permits to do so if such removal is ultimately required. On questioning, Ms. Mueller clarified that the distance between the dwelling and the side property line is 32 feet: 28 feet to the edge of the driveway and then 4 feet between the driveway and the property line. On questioning as to whether the width of the driveway could be reduced by one (1) foot to 27 feet, so as to provide a conforming 5-foot driveway setback, Ms. Mueller opined that the narrower driveway would be less safe. The Board Engineer, Mr. Koutsouris, concurred that a driveway width of less than 28 feet would make it difficult for the Applicants to access the garage. On questioning as to the setback of the adjacent driveway, Ms. Mueller advised that she could not provide an exact measurement as she did not have a survey of that property and relied on aerial photographs.

15. On questioning, Ms. Mueller confirmed that the proposed pool decking will be raised and that the Applicants will ensure that the existing/proposed pool fencing complies with the Ordinance requirements, as well as the New Jersey Department of Environmental Protection (“NJDEP”) regulations. Mr. Schley and Ms. Mueller discussed the limits of the wetlands and wetland buffer conservation easement and stream buffer conservation easement, and the

Applicants stipulated to revising the proposed wetland buffer conservation easement limits, same to be subject to the review and approval of the Township Engineering Department.

16. On discussion of the June 24, 2021 Review Letter prepared by the Board Engineer, the Applicants stipulated, as a condition of approval, to complying with all of the comments and requirements set forth therein. On questioning, Ms. Laird testified that the pool equipment is located to the rear of the dwelling and is surrounded by a board-on-board fence, and she stipulated, as a condition of approval, to said equipment remaining in its current location. On questioning, Ms. Laird testified that no pool lighting is proposed, but she stipulated that if any was to be installed that such lights would be downward directed and/or shielded so as to prevent light spillage onto any adjacent property.

17. The Board engaged in discussion regarding whether there are safety concerns associated with having two driveways immediately adjacent, and very close, to each other. Ms. Mueller explained that vehicles will not be reversing into the same area because the driveway aprons are staggered. On discussion, Ms. Mueller advised that installing curbing would not improve safety, but rather that it would serve only to concentrate stormwater runoff, and Mr. Koutsouris concurred. The Applicants subsequently stipulated to installing boxwoods or a split-rail fence between the two adjacent driveways, same to be subject to the review and approval of the Township Engineering Department.

18. On questioning, Ms. Laird testified that she had spoken to her neighbors and none of them expressed objection to the proposal. She said, in fact, that the most affected neighbor (with the adjacent driveway) is allowing the Applicants to store materials in their garage while they await construction. On questioning, Ms. Mueller testified that the distance from the rear of the dwelling to the pool is approximately 7 feet (4 feet of which includes the stairs from the deck).

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

DECISION

20. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the pre-existing lot width, improvable lot area, and deficient front-yard setback deviations under N.J.S.A. 40:55D-70(c)(1) and for the deficient driveway setback under N.J.S.A. 40:55D-70(c)(2).

Variance Relief – Subsection c(1) Positive Criteria:

21. First, as to the “positive criteria” for subsection “(c)(1)” or “hardship” variance relief for the non-conforming lot width, improvable lot area, and front-yard setback, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. The Board recognizes that the Property was conforming until 1999, when the minimum lot width requirement increased from 150 feet to 200 feet. The Property became further nonconforming in 2006, when improvable lot area requirements were first adopted. As such, the Board finds that the minimum lot width and minimum improvable lot area deviations were pre-existing conditions and the undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title.

22. The Board further finds that the Applicants have established that no additional land is available for purchase which would bring the lot width and/or improvable lot area into, or significantly closer to, conformity with the district standards of the Ordinance. The evidence revealed that the Applicants’ building envelope is encumbered by wetlands, stream buffers and

floodplain associated with watercourses that flow along the south side and westerly/rear property lines, resulting in an improvable lot area of only 6,292 square feet. Moreover, the Applicants' lot adjoins a total of five lots to the sides and rear, all of which are similarly environmentally constrained. The lot to the north side and the three lots to the south side are occupied by dwellings and have nonconforming lot widths. The lot to the rear is a vacant, deed-restricted open space lot. It is not possible for the Applicants to purchase a portion of any adjoining lot to make their lot more conforming, without making an adjoining lot more nonconforming.

23. As to the deficient front-yard setback, the Board recognizes that the location of the proposed dwelling is constrained by the location of the existing lawfully constructed swimming pool. In this regard, the Board recognizes that there is a limited amount of space between the dwelling and the pool and that reducing that distance in order to provide a conforming front yard setback would not provide sufficient space between the structures. The Board further recognizes that the encroachment is limited to uncovered front steps, rather than the length of the entire of the dwelling.

24. Finally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested subsection c(1) variance relief.

Variance Relief – Subsection c(2) Positive Criteria:

25. Second, the Board finds the Applicants have satisfied the positive criteria for subsection “c(2)” or “flexible c” variance relief for the deficient driveway setback. Specifically, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning

requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. Here, the proposed driveway location will allow the Applicants to construct the dwelling in a location that will not result in an increased disturbance of environmentally constrained portions of the Property. Additionally, the Board recognizes that the driveway is immediately adjacent to the next-door neighbor's driveway, such that the vehicular noise from each neighbor's vehicles will be mitigated by the location of the driveways. Moreover, the installation of boxwoods or a split-rail fence will provide a safety benefit by demarcating the end of each driveway area so as to minimize the likelihood of vehicle conflicts. Accordingly, the Board finds that the relatively modest detriments associated with granting the requested relief will be mitigated by the stipulated to conditions. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested subsection c(2) variance relief.

Variance Relief – Subsection c(1) and c(2) Negative Criteria:

26. Third, the Board finds that the Applicants have satisfied the negative criteria for variance relief; that is, they have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

27. As to the substantial detriment prong of the negative criteria, the Board finds that the proposed dwelling will not be substantially out of character with the neighborhood. Moreover, the Board finds that the relatively modest detriment associated with the Applicants' proposal will be sufficiently mitigated by the stipulated to conditions.

28. Additionally, the Board recognizes that no member of the public objected to the Applicants' proposal. As to the substantial impairment prong of the negative criteria, the Board finds that single-family dwellings 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 Applicants have satisfied both the positive and negative criteria for the requested variance relief pursuant to the alternative bases set forth in subsections c(1) and c(2).

WHEREAS, the Board took action on this application at its meeting on July 7, 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 4th day of August, 2021, that the application of **THERESE L. LAIRD and JOHN QUERRAZZI**, 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 two (2) foot encroachment into the required front-yard setback shall be limited to the uncovered (approximately two) porch steps;
- (3) The Applicants shall submit a tree protection, removal and replacement plan, as applicable, same to be subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (4) The Applicants shall construct the proposed pool decking as "open deck", i.e. a raised platform not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open, as defined in Section 21-18A.1 of the Ordinance;
- (5) The Applicants shall, prior to demolition of the existing dwelling, demonstrate that the existing/proposed pool fencing complies with all applicable code requirements and any applicable NJDEP regulations. Additionally, the Applicants shall ensure that a code-compliant safety barrier remains in place throughout the demolition/construction process;
- (6) All wetlands and wetlands transition areas shall be contained within a wetlands conservation easement deeded to the Township. The proposed easement boundaries shown on the plans shall be subject to further review and approval by the Township Engineering Department. The easement shall be prepared by the Township Attorney, executed by the Applicants, and recorded with the Somerset County

Clerk prior to issuance of a construction permit. The easement boundary shall be delineated with Township standard markers (not more than 100 feet apart), which shall be bonded prior to issuance of a construction permit and installed prior to issuance of a certificate of occupancy;

- (7) All stream buffer conservation areas shall be contained within a stream buffer conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, executed by the Applicants, and recorded with the Somerset County Clerk prior to issuance of a construction permit;
- (8) A National Flood Insurance Program Elevation Certificate, completed to document compliance with the Township Flood Damage Prevention Ordinance, shall be submitted to the Township Engineering Department prior to issuance of a building permit;
- (9) The Applicants shall make the site 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 existing dwelling;
- (10) All proposed utility services shall be underground and routed to minimize disturbance to existing trees;
- (11) The Applicants shall provide boxwoods or a split-rail fence or equivalent means of demarcation visible to drivers between the two adjacent driveways subject to the review and approval of the Township Engineering Department.
- (12) An engineering permit shall be obtained prior to any work within the Township right-of-way;
- (13) A completed Township standard lot coverage disclosure form shall be submitted prior to issuance of a construction permit;
- (14) A development fee shall be required in accordance with Section 21-86 of the Ordinance;
- (15) The project is subject to approval by the Somerset-Union Soil Conservation District and proof of same shall be submitted to the Township Engineering Department;
- (16) The Applicants shall utilize “best management practices” when discharging pool water;
- (17) The Applicants shall revise the plans to include a detail of the proposed pool decking and same shall establish that such decking does not constitute impervious coverage;

- (18) The Applicant shall revise the drainage system detail to include a note indicating that a soil log shall be provided in the location of the system to ensure that the ground water is a minimum of 1 foot below the bottom of the gravity detention system and same shall be subject to the review and approval of the Township Engineering Department
- (19) 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;
- (20) 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
- (21) Pursuant to Section 21-5.10 of the Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on August 4, 2021.



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

Dated: August 4, 2021

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**CARMINE and CYNTHIA DINARDO
Case No. ZB20-017**

RESOLUTION

WHEREAS, **CARMINE and CYNTHIA DINARDO** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variances in connection with the approval of an existing enclosed porch that was constructed over a patio at the rear of the existing one-story dwelling without prior approval, on property identified as Block 8101, Lot 9 on the Tax Map, more commonly known as 282 Stonehouse Road (the “Property”):

1. A variance for a side-yard (south) setback of 15.9 feet¹ to the enclosed porch, whereas the existing side-yard setback is 0 feet, and whereas the minimum required side-yard setback in an R-4 (1 acre) residential zone is 20 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”);
2. A variance for a combined side-yard setback of 42.6 feet to the enclosed porch, whereas the existing combined side-yard setback is 26.7 feet¹, and the minimum required combined side-yard setback in an R-4 (1 acre) residential zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and
3. A variance for a rear-yard setback of 15.2 feet to the enclosed porch, whereas the existing rear-yard setback is 0 feet¹, and the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 7, 2021, at which time interested citizens were afforded an opportunity to appear and be heard; and

¹ Pursuant to the Township Stream Buffer Conservation Ordinance, adopted in 2001, when a yard adjoins a stream, setbacks are measured from the centerline of zone two of the stream buffer. The Applicants’ dwelling is presently located within the stream buffer, such that the existing south side- and rear-yard setbacks are 0 feet and the existing combined side-yard setback is 26.7 feet. As part of their proposal, the Applicants are requesting a zone two waiver, which would eliminate a portion of zone two and provide for the proposed setbacks indicated above, which are measured from zone one of the stream buffer and, hence, are greater than what presently exists, albeit still deficient.

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

1. The Property consists of 44,739 square feet (1.03 acres) located in the R-4 (1 acre) residential zone with frontage on Stonehouse Road. The lot is somewhat narrow (180.49' width; 200' width required), irregularly shaped and is traversed front-to-rear, along the side property line, by an unnamed tributary to the Passaic River. The 75-foot-wide stream buffer conservation area associated with this watercourse consumes the majority of the Property, making a conforming addition impossible.

2. While the Applicants propose no disturbance within the stream buffer area, they are requesting a zone two waiver to eliminate the zone two portion of stream buffer occupied by the dwelling. The requested waiver would provide more conforming side- and rear-yard setbacks for the enclosed porch. Pursuant to Section 21-14.4.b.3(d) of the Ordinance:

“If the applicant submits a stream buffer management plan, in consideration of Subsection 21-14.4a, that proves to the satisfaction of the approving authority that a proposed vegetative or other enhancement to Zone One will eliminate the need for a Zone Two or a portion of Zone Two, the approving authority shall waive the requirement for a Zone Two or a portion of Zone Two, provided that the approved stream buffer management plan is implemented by the applicant.”

3. The Applicants seek approval for an existing 13.3 foot by 29.8 foot (395 square feet) enclosed porch that was constructed over a patio at the rear of the pre-existing one-story dwelling without prior approval.

4. The Applicants' proposal is depicted on a Variance Plan and Zone 2 Waiver Request Map prepared by Frank J. Little, Jr., P.E., P.P., dated May 11, 2021, unrevised, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by William G. Hollows, P.E., P.P., P.L.S., dated February 28, 2019, unrevised, same consisting of one (1) sheet;

a Survey prepared by Richard F. Smith, Jr., dated November 16, 1994, unrevised, same consisting of one (1) sheet; a Wetland Delineation Field Study prepared by Peter Ritchings of Environmental Management Group, Inc., dated March 31, 2021; a Letter of Map Amendment Determination from the Federal Emergency Management Agency (“FEMA”) dated May 23, 2019; and a photograph of the enclosed porch.

5. The requested variances for the side-, combined side- and rear-yard setback deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

6. David Schley, A.I.C.P., P.P., the Board Planner, and Sam Koutsouris, P.E., the Substitute Board Engineer, both were duly sworn according to law.

7. Carmine and Cynthia DiNardo, the Applicants, having an address of 282 Stonehouse Road, were duly sworn according to law. Mrs. DiNardo testified that the Applicants constructed the three-season porch on existing concrete located between the inground pool and the dwelling. She explained that the Applicants were not aware that variance relief was required until they began the process of selling the dwelling. On questioning, Mr. DiNardo advised that he began constructing the porch approximately fifteen (15) years ago and that it took approximately five (5) years to complete the project.

8. Frank J. Little, Jr., P.E., P.P., of Owen, Little and Associates, Inc., having a business address of 443 Atlantic City Boulevard, Beachwood, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the fields of civil engineering and professional planning.

9. On discussion of the review memorandum prepared by the Board Planner, Mr. Schley, Mr. Schley explained that the Applicants’ proposal is affected by the Stream Buffer Conservation Ordinance, which was adopted in 2001. Mr. Schley explained the unnamed tributary

to the Passaic River located along the side property line requires a 75-foot-wide stream buffer conservation area and that same consumes 80-90% of the Property and almost all of the existing dwelling. He further explained that the stream buffer consists of a 25-foot-wide Zone One located adjacent to the stream, plus a 50-foot-wide Zone Two located adjacent to Zone One. Here, the Applicants' dwelling is located within the stream buffer, such that the existing rear- and south side-yard setbacks are zero feet. As such, the Applicants are requesting a Zone Two Waiver in order to eliminate a portion of Zone Two, and reduce the magnitude of the rear-yard setback encroachment to better accommodate the proposed expansion of the dwelling. Mr. Schley explained that if the side-, combined side-, and rear-yard setbacks were measured from Zone One, rather than Zone Two, the side-yard setback to the porch would be 15.9 feet, the combined side-yard setback would be 42.6 feet, and the rear-yard setback would be 15.2 feet.

10. Mr. Schley explained that, given the scope of the project, i.e., one clean/nonvehicular impervious surface (porch) replacing another (patio), the Applicants' stream buffer management plan is limited to establishing a stream buffer conservation easement. The Applicants stipulated, as a condition of approval, to executing a stream buffer conservation easement and a wetlands conservation easement and further stipulated that the stream buffer management plan will also include a commitment to utilize the "best management practices" when discharging pool water. The Applicants also stipulated to submitting a copy of the Letter of Map Amendment ("LOMA") issued on May 23, 2019.

11. On discussion of the June 24, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, Mr. DiNardo advised that the Applicants had obtained a permit in August of 2008 for the existing shed and stipulated to submitting a copy of same to the Township Engineering Department. On discussion, Mr. Dinardo testified that he did not believe there was a riparian buffer

associated with the unnamed tributary on his Property and stipulated, as a condition of approval, to having the environmental specialists confirm the locations and width of the required buffers and to revising the plans accordingly.

12. On discussion of the October 24, 2020 Review Memorandum prepared by the Environmental Commission, Mr. Schley noted that the Memorandum was likely prepared before the Commission had the current plans, because the current plans show the stream buffers as requested in the Memorandum.

13. Mr. Little contended that the Applicants had demonstrated an entitlement to the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(1), because the Property is constrained by wetlands and stream buffers, such that the Applicants could not have constructed the enclosed porch in a conforming location. He reminded the Board that the enclosed porch had been constructed on existing impervious coverage and did not encroach any further than the existing dwelling encroaches into the existing buffer areas.

14. Rone Lewis, having an address of 6 Deerfield Court, was duly sworn according to law and testified that he had taken the photographs submitted with the application materials on September 24, 2020. On questioning, Mr. Lewis confirmed that the photographs constitute an accurate depiction of the Property as it presently exists.

15. On questioning, Mr. DiNardo testified that he should have gotten permits when he installed the windows in the three-season room. He confirmed that there is no heat or electric in the three-season room. On questioning as to the foundation, Mr. DiNardo testified that it consists of masonry with footings and acknowledged he would have to obtain the necessary permits and, if the permits are denied, would have to modify the construction as necessary to obtain approval.

16. Adrienne M. Bagnato, having an address of 3152 Valley Road, questioned the distance between the enclosed porch and the stream. Mr. Schley advised that the enclosed porch is 15.9 feet from Zone One of the stream buffer, and that Zone One is 25 feet wide, resulting in a setback of approximately 40 feet from the stream. Ms. Bagnato questioned the accuracy of the surveys submitted with the application materials. She further questioned the standards for granting the requested relief and whether the proposal would have a detrimental impact on the wildlife in the area. Mr. Little advised that the enclosed porch/three-season room is not located within any environmentally regulated areas and was constructed over an existing patio area, such that there would be no additional stormwater runoff associated with the proposal. Ms. Bagnato questioned whether future purchasers of the Property would be able to expand the structure, and Mr. Schley advised that such an expansion would require the future purchasers to obtain variance approval.

17. Ms. Bagnato was duly sworn according to law and expressed her objection to the proposal. She explained that the Applicants should have been required to obtain permits and contended that the Applicants faced no hardship. Ms. Bagnato expressed further concern that the structure would be expanded.

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

DECISION

19. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested waiver of a portion of Zone Two of the stream buffer, and the requested variance relief for the front-, side-, and combined side-yard setback deviations under N.J.S.A. 40:55D-70(c)(1).

20. The Board recognizes that the setback deviations are a function of measuring the side- and rear-yard setbacks from the centerline of Zone Two of the stream buffer. The Township's

Stream Buffer Conservation Ordinance (Section 21-14.4), adopted in 2001, generally requires a 75 foot wide stream buffer conservation area consisting of a 25 foot wide Zone One located adjacent to the stream, plus a 50 foot wide Zone Two located adjacent to Zone One. The Board finds that it would have been impractical for the Applicants to build a conforming addition that meets the setback requirements even with the Zone Two Waiver, let alone without it. The Board further finds that the Applicants have submitted an appropriate stream buffer management plan that will mitigate any detriments associated with the elimination of the Zone Two buffer area. Finally, the Board recognizes that the undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created.

21. As to the positive criteria for subsection “(c)(1)” or “undue hardship” variance relief for the requested deficient front-, side-, and combined side-yard setbacks, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property, as a result of unique conditions relating to the Property, which is narrow and constrained by wetlands and an unnamed tributary to the Passaic River, as well as associated buffer areas.

22. As to the negative criteria for the requested variance relief, the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong, the Board recognizes that the enclosed porch/three-season room has existed for many years without issue and finds that that the relatively modest detrimental impact is mitigated by the proposed stream buffer management plan, and the other conditions stipulated to by the Applicants and set forth below. As to the substantial

impairment prong of the negative criteria, the Board recognizes that an enclosed porch is permitted in the R-4 Residential Zone and finds 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 Applicants have 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 July 7, 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 4th day of August, 2021, that the application of **CARMINE AND CYNTHIA DINARDO** 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. All wetlands and wetlands transition areas shall be contained within a wetlands conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, and shall be executed by the Applicants and recorded with the Somerset County Clerk prior to issuance of a certificate of occupancy for the enclosed porch. The easement boundary shall be delineated with Township standard markers, which shall be bonded or installed prior to issuance of a certificate of occupancy;
3. The stream buffer conservation area shall be contained within a stream buffer conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, and must be executed by the applicant and recorded with the Somerset County Clerk prior to issuance of a certificate of occupancy.
4. The Applicants shall use the best management practices available when discharging pool water consistent with the recommendations attached to the Review Memorandum of the Township Planner;
5. The Applicants shall submit a copy of the Letter of Map Amendment issued on May 23, 2019;

6. The Applicants shall obtain a construction permit for the enclosed porch, and shall submit a copy of the permit received for the construction of the shed;
7. The plan shall be revised to show the riparian zone required pursuant to New Jersey Department of Environmental Protection (“NJDEP”) Flood Hazard Area Control Act Rules, and the Applicants shall obtain any and all necessary permits from the NJDEP associated with the enclosed porch, which appears to be eligible for a permit by rule. Copies of said permit(s), if determined to be necessary by the NJDEP, shall be submitted to the Township Engineering Department prior to issuance of a construction permit;
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 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
10. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on August 4, 2021.



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

Dated: August 4, 2021.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**UWE P. TRINKS
Case No. ZB21-018**

RESOLUTION

WHEREAS, UWE P. TRINKS (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking approval to construct a 22 foot by 22 foot (484 square feet) basement level garage addition with a 22 foot by 24 foot (528 square feet) deck on top, in the front of a two-story addition approved by the Board in 2020, together with an expanded driveway, on property identified as Block 11601, Lot 30 on the Township Tax Map, more commonly known as 50 Long Road (the “Property”):

- (1) A variance for a proposed side-yard setback (north) of 42.6 feet to the addition, whereas the existing/approved side-yard setback is approximately 21.16 feet, and the minimum required side-yard setback in the R-3 (2 acre) Zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Use Ordinance (the “Ordinance”);
- (2) A variance for a proposed combined side-yard setback of 90.7 feet to the addition, whereas the existing/approved combined side-yard setback is approximately 69.26 feet, and the minimum required combined side-yard setback in the R-3 (2 acre) Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and
- (3) A variance for a proposed rear-yard setback of 54.85 feet to the addition, whereas the existing/approved rear-yard setback is approximately 30.34 feet, and the minimum required rear-yard setback in the R-3 (2 acre) Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and

WHEREAS, a public hearing on notice was held on this application on July 7, 2021, at which time interested citizens were afforded an opportunity to be heard; and

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

1. The Property consists of approximately 3.05 acres and is an irregularly shaped, narrow lot with frontage on Long Road. The Property is presently improved with a two-story dwelling, detached garage, breezeway, deck, firepit, gravel area at the end of the driveway, shed, walkways, and paved driveway.

2. In 2020, as part of Application #ZB-20-012, the Applicant sought, and received approval, to construct a 5 foot by 22 foot (110 square feet) expansion of an existing deck at the rear of the existing dwelling and also to construct a two-story, approximately 15.5 foot by 19 foot (579 square feet) addition with an attached approximately 10 foot by 19 foot (190 square feet) sun roof (glass pergola). The Board granted side- and rear-yard setback variance relief permitting the proposed expansion and addition.

3. The Applicant now proposes to construct a 22 foot by 22 foot (484 square feet) basement-level garage addition with a 22 foot by 24 foot (528 square feet) deck on top. The proposed improvements are to be located at the front of the previously approved addition/sunroof. The Applicant further proposes to expand the existing driveway by 406 square feet to provide access to the proposed garage. The proposed side- and rear-yard setbacks of the proposed garage/deck do not comply with the setback requirements, however, in all cases, the proposed setbacks are greater than the setbacks of the previously approved structures.

4. The requested bulk variance relief is governed by N.J.S.A. 40:55D-70(c).

5. The Applicant's proposal is depicted on a Variance Plan prepared by James O. Madsen, P.E., dated June 7, 2021, unrevised, same consisting of four (4) sheets; and Architectural plans prepared by Frank Joseph Bell, R.A., dated March 5, 2021, unrevised, same consisting of one (1) sheet. The Applicant also submitted Soil Log and Percolation Tests prepared by Vincent

J. Ruggiero, P.E., dated June 7, 2021; and a compendium of eight (8) photographs, same consisting of two (2) sheets.

6. David Schley, P.P., A.I.C.P., the Township/Board Planner, and Sam Koutsouris, P.E., the Substitute Board Engineer, were duly sworn according to law.

7. Uwe Trinks, the Applicant, having an address of 50 Long Road, was duly sworn according to law. He testified that he was previously before the Board in October 2020 when he received a variance to construct a two-story addition. He explained that the proposed improvements will be located in front of the previously approved addition. Mr. Trinks further testified that the current proposal, while nonconforming, does not exacerbate the magnitude of the existing deviations because the proposed garage/deck expansion are no closer to the property lines than the existing dwelling.

8. On questioning, Mr. Trinks testified that he had taken the photographs submitted with the application materials in May of 2021 and confirmed that said photographs constitute accurate depictions of the Property as it presently exists.

9. On discussion of the June 25, 2021 Review Memorandum prepared by the Township Planner, Mr. Schley, Mr. Schley explained that the Applicant's dwelling was constructed prior to the 1999 zoning amendments, which amendments increased the minimum required side-yard and combined side-yard setbacks from 20 feet each and 50 feet combined, to 50 feet each and 100 feet combined, respectively. Mr. Schley further explained that the 1999 zoning amendments also increased the minimum required rear-yard setback from 75 feet to 100 feet. He confirmed that the Applicant's proposal does not result in an exacerbation of the existing nonconforming setbacks.

10. Mr. Schley explained that the Applicant's current proposal, considered together

with the improvements approved in 2020, constitute a “minor development,” requiring soil erosion and sediment control measures and stormwater infiltration measures in accordance with Section 21-42.11 of the Ordinance. The Applicant stipulated that the stormwater management measures shown on the plans would be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit.

11. On discussion of the June 24, 2021 Review Letter prepared by the Board Engineer, the Applicant stipulated to complying with the comments and requirements set forth therein. Mr. Trinks explained that he is proposing to construct a drywell near the driveway and that all overflow will be directed toward the right-of-way. Mr. Koutsouris advised that the proposed limit of disturbance of 4,020 square feet falls below the 5,000 square foot threshold requiring Soil Conservation District certification and the Applicant stipulated to revising the plans accordingly. Mr. Koutsouris requested that the Applicant address the proposed sloping backfill adjacent to the wall along the easterly side of the driveway. Mr. Trinks explained that, although the plan shows the backfill area as sloping, the area is actually flat and will be used as a rose garden. He stipulated, as a condition of approval, to revising the plans and, if required, submitting a wall design detail, same to be subject to the review and approval of the Township Engineering Department prior to the issuance of any permits.

12. On questioning, Mr. Trinks explained that the proposed garage will provide access to the basement. On further questioning, he confirmed that the existing two-car detached garage will also remain on the Property. Mr. Trinks explained that the proposed garage will be underground, and the deck above it will be flush with the existing front deck.

13. Mr. Trinks stipulated that any lighting would be downward directed and/or appropriately shielded to eliminate light spillage onto the adjacent properties. He further stipulated

to complying with all of the prior conditions of approval set forth in the approvals he previously received.

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

BOARD DECISION

15. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, concludes that the Applicant has satisfied his burden of proving an entitlement to the requested bulk variance relief for the proposed side-, combined side-, and rear-yard setback deviations, pursuant to N.J.S.A. 40:55D-70(c)(1).

16. First, as to the "c(1)" or "hardship" positive criteria, the Board finds that the Applicant has satisfied his burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the Applicant as the owner of the Property. Here, the Property is an irregularly shaped and narrow lot and, given the location and orientation of the Applicant's lawfully existing dwelling thereon, it is exceptionally difficult, if not impossible, for the Applicant to construct the proposed improvements in a conforming location. The Board notes that the proposed improvements do not exceed the magnitude of the side- and rear-yard setback deviations previously approved by the Board in 2020. Additionally, the Board recognizes that the Applicant's dwelling was constructed prior to the 1999 zoning amendments which increased the minimum required side- and combined side-yard setback requirements. Moreover, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by this Applicant or any predecessor-in-title. Finally, the Board recognizes that there is no adjacent land available for the Applicant to acquire to bring the Property into, or closer to, conformity with

respect to these deviations. As such, the Board finds that the Applicant has demonstrated the positive criteria for subsection c(1) variance relief.

17. Second, as to the negative criteria for the bulk variance relief, the Board finds that the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong, the Board finds that the Applicant has demonstrated that the proposed improvements are not substantially out of character with the neighborhood and will not have a detrimental impact thereon given the proposed location of same and de minimis nature of the requested relief. In this regard, the Board recognizes that the proposed improvements will not encroach further into the previously approved non-conforming side- and rear-yard setbacks. The Board further recognizes that no member of the public objected to the Applicant's proposal. As to the substantial impairment prong, the Board recognizes that a single-family dwelling is a permitted use in the R-3 Zone and finds 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 demonstrated the negative criteria for subsection c(2) variance relief.

WHEREAS, the Board took action on this application at its meeting on July 7, 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 **UWE P. TRINKS**, for bulk variance relief, 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 soil erosion and sediment control measures and stormwater infiltration measures shall be subject to further review and approval by the Township Engineering

Department prior to the issuance of a construction permit;

3. The Applicant shall revise the plans to properly reflect the grading of the area adjacent to the wall along the easterly side of the driveway and, if the wall is not determined to be a landscape wall, the Applicant shall submit a wall design signed and sealed by a New Jersey licensed engineer, same to be subject to the review and approval of the Township Engineering Department prior to the issuance of any permits;
4. The Applicant shall revise the plans to include spot grades along the proposed walls. The Applicant shall also provide additional spot grades for the area of grading between the proposed deck extension on the easterly side of the proposed garage and the retaining wall to the south to ensure said area will drain. All plan revisions shall be subject to the review and approval of the Township Engineering Department;
5. Any proposed lighting shall be downward directed and/or appropriately shielded so as to avoid light spillage onto the adjacent properties;
6. The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State. The Applicant shall obtain permits and/or approvals from all applicable agencies and/or departments, including but not limited to the Somerset County Planning Board;
7. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, including the approval adopted in case ZB20-012, to the extent same are not inconsistent with the terms and conditions set forth herein; and
8. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of August 4, 2021.



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

Dated: August 4, 2021.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**MICHAEL and WENDY PORR
Case No. ZB21-023**

RESOLUTION

WHEREAS, **MICHAEL and WENDY PORR** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with (1) the construction of an approximately 20 foot by 32 foot (672 square feet) inground swimming pool and surrounding ground-level (6” high) wood deck; (2) the approval of an existing 66 square foot shed that was installed without approval; and (3) the removal of a 102 square foot portion of the existing driveway, relating to property identified as Block 1611, Lot 48 on the Tax Map, more commonly known as 10 Prospect Avenue (the “Property”):

1. A variance for an existing side-yard (west) setback to an accessory structure (shed) of 3.2 feet, whereas the minimum required side-yard setback to an accessory structure in the R-7 Residential Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance (the “Ordinance”);
2. A variance for an existing rear-yard setback to an accessory structure (shed) of 2.4 feet, whereas the minimum required rear-yard setback to an accessory structure in the R-7 Residential Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Ordinance;
3. A variance for a proposed side-yard (west) setback to the pool equipment of 4 feet, whereas the minimum required setback for a private pool (including all buildings, structures, equipment and appurtenances thereto) is 20 feet, pursuant to Section 21-18.1 of the Ordinance; and
4. A variance for a proposed lot coverage of 31.91%, whereas the existing lot coverage is 27.81%, and the maximum permitted lot coverage in the R-7 Residential Zone is 20%, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 7, 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 Property is a slightly narrow (100 feet wide; 125 feet width required), and slightly undersized (19,041 square feet existing; 21,780 square feet required), regularly (rectangular) shaped lot, located in the R-7 (1/2 acre) Residential Zone, with frontage on Prospect Avenue. It is presently improved with a two-story, single-family dwelling, an unapproved shed in the rear yard, paver patio, and associated other improvements.

2. The Applicants propose to construct a 20 foot by 32-foot (672 square feet) inground swimming pool, with a surrounding ground-level (6" high) wood deck, located to the rear of the existing dwelling. The Applicants also seek variance relief for an existing 66 square foot shed that was installed without prior approval. Finally, the Applicants propose to remove a 102 square foot portion of the existing driveway to partially compensate for the excessive existing and proposed impervious coverage.

3. The Applicants' proposal is depicted on Plans prepared by Rudolph Holzmann, P.E., of Yannaccone, Villa & Aldrich, LLC, dated July 28, 2020, last revised April 7, 2021, same consisting of three (3) sheets; and a Survey prepared by George R. Pronesti, P.L.S., dated May 4, 2007, last revised May 18, 2007, same consisting of one (1) sheet. The Applicants also submitted a compendium of five (5) photographs of the Property, same consisting of two (2) sheets.

4. The side- and rear-yard accessory setback (shed), pool equipment setback, and lot coverage variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).

5. David Schley, P.P., A.I.C.P, the Board Planner, and Sam Koutsouris, P.E., the Substitute Board Engineer, both were duly sworn according to law.

6. Frederick B. Zelle, Esq., of Bisogno, Loeffler, and Zelle, LLC, entered his appearance on behalf of the Applicants. Mr. Zelle described the existing and proposed conditions. He contended that the existing excess coverage is a pre-existing non-conforming condition and that the shed at issue has been on the Property for eleven (11) years. Mr. Zelle confirmed that the Applicants are proposing a 780 square foot (4.1%) net increase in impervious coverage. He contended that the pool surface/water is “stormwater neutral.”

7. Michael and Wendy Porr, the Applicants, having an address of 10 Prospect Avenue, were duly sworn according to law. Mr. Porr testified that the Applicants reside at the Property with their two children. He confirmed that he had taken the photographs submitted with the application materials on May 30, 2020 and that said photographs constitute an accurate depiction of the Property as it presently exists. Referencing same, Mr. Porr described each of the photographs. He contended that the shed is well screened from the neighbors by the existing landscaping, as well as a 6-foot-tall fence. Mr. Porr further contended that the shed is not visible from the right-of-way because there are large pine trees that are approximately 20 feet tall and the canopies are between 15 and 20 feet wide.

8. Mr. Porr testified that the Applicants are seeking approval to construct an inground pool with deck surround, as well as for a shed that was installed in 2007 without the necessary permits. On questioning, Mr. Porr confirmed that he has not received any complaints from his neighbors regarding the shed. He explained that the shed is 8 feet by 8 feet, constructed on top of a wooden platform, and painted to be consistent with the existing dwelling. On questioning, Mr. Porr advised that the Applicants had not constructed any of the existing additions to the dwelling.

9. Mr. Porr testified that the Applicants discovered that they needed variance relief when they expanded the patio in 2018 and, as part of the permit approval process, they had to

remove a certain amount of excess impervious coverage associated with the then-existing driveway. He explained that the then-existing driveway was very wide and that the Applicants reduced the size of it without violating the minimum driveway width requirements. Mr. Porr explained that the Applicants are again seeking to remove some of the existing coverage to reduce the net increase of impervious coverage associated with the pool improvements. On questioning, he testified that the shaded triangular area at the rear of the driveway on the plans depicts the proposed area of pavement to be removed.

10. On discussion of the proposed pool, Mr. Porr testified that he wants to provide recreation and relaxation opportunities for his family. He explained that the proposed pool is rectangular in shape, with dimensions of 32 feet by 20 feet, and with a 4 foot by 8-foot bump-out for a walk-in area. On questioning, Mr. Porr testified that the pool surround will consist of raised decking, but same will be pervious. He further testified that the gravel swales referenced on the plans are just river rocks throughout the backyard, but that, recently, said rocks had been removed and replaced with mulch and grass. The Applicants stipulated that any proposed lighting would be downward directed and/or appropriately shielded, so as to eliminate any light spillage onto the adjacent properties. On questioning, Mr. Porr testified that he had discussed the proposal with his neighbors and all of them expressed support for same.

11. Rudolph L. Holzmann, P.E., having a business address of 460 Main Street, Chester, New Jersey, was duly sworn according to law. He provided an overview of the existing and proposed conditions and confirmed that the Property is not encumbered by wetlands or other environmental constraints. Mr. Holzmann described the proposed pool and wood decking surround. He confirmed that the decking will be flush with the pool coping and it will be pervious so as to allow water to drain through it. Mr. Holzmann testified that the Applicants also propose

to remove a portion of the driveway and opined that doing so will not have a detrimental impact on vehicular circulation.

12. On questioning as to the location of the pool equipment, Mr. Holzmann conceded that it is not adjacent to the pool, but contended that it is in an accessible area that is well screened. He further testified that the Applicants are seeking variance relief for the proposed excess impervious coverage and deficient setbacks to the shed and pool equipment. On questioning, he testified that the water surface of the proposed pool is 672 square feet. On questioning as to the nature of the rocks on the right side of the deck, Mr. Porr advised that they are a tribute to his wife's parents who live in Vermont, and are solely for aesthetic purposes. On questioning as to the location of the pool equipment, Mr. Holzmann explained that locating the equipment closer to the pool would reduce the functionality of the rear yard. On discussion, Mr. Holzmann opined that the proposed location for the pool and related improvements constitutes the most optimal location as it is close to the utilities and less visible to the neighbors.

13. On discussion of the Review Memorandum prepared by the Board Planner, Mr. Schley, the Applicants stipulated, as a condition of approval, to complying with all of the comments and requirements set forth therein. As to Comment 5, Mr. Holzmann explained that the "gravel swale" shown on the plans was not included in the lot coverage calculations, because it is not used as a driveway or area for parking or turning and is not compacted. As to Comment 6, Mr. Holzmann explained that the ground surface area between the paved driveway and the wood fence, labeled as "gravel area", consists of decorative river stone, and same also was not included in the impervious coverage calculations. On discussion, the Applicants stipulated to converting said "gravel swale" to grass. Mr. Schley advised that said area was supposed to have been converted from impervious to pervious coverage as part of the 2018 approval.

14. On discussion of the June 24, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth therein. As to Comment 5, Mr. Holzmann explained that the existing gravel swale in the northeasterly corner of the Property receives stormwater discharge from a 4” pipe, and said runoff is ultimately directed into a creek. He confirmed that he did not observe any evidence of concentrated runoff or erosion. On questioning, Mr. Holzmann confirmed that there is no clearly defined discharge channel. As to Comment 7, Mr. Holzmann advised that the construction entrance pad could be relocated to the rear yard, and he stipulated that the Applicants would revise the plans accordingly. He further stipulated that, if the driveway needs to be repaired after the improvements are constructed, the Applicants will do so. On discussion of the proposed deck construction, Mr. Holzmann advised that the pool deck could be raised 6” to ensure there is sufficient space for stormwater runoff to percolate into the ground.

15. On discussion of the existing impervious coverage, Mr. Porr advised that he did not know that the amount of coverage on the Property when he purchased it was in excess of the maximum amount permitted by the Ordinance. On questioning, Mr. Porr testified that the Applicants preferred not to reduce the size of the 765 square foot patio that they recently had constructed and, instead, preferred to reduce the amount of impervious coverage by further reducing the size of the driveway. On discussion, Mr. Holzmann advised that the Applicants could likely reduce the width of the driveway from 14 feet to 10 feet, which would reduce the impervious coverage by approximately 100 square feet. The Board discussed whether it made sense to reduce the width of the driveway even though same would not address the Board’s concerns as to massing associated with the significant excess of impervious coverage.

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

DECISION

17. After reviewing the evidence submitted, the Board, by a vote of 3 to 3, statutorily denied¹ the application for the relief related to the construction of the proposed pool, i.e., the excessive lot coverage and the deficient setback from the pool equipment, finding that the Applicants had not satisfied their burden of proving an entitlement to the requested variance relief under either N.J.S.A. 40:55D-70(c)(1) or (c)(2).

18. However, the Board, by a vote of 6 to 0, approved the application for the relief related to the deficient setbacks associated with the existing (but not previously approved) shed, finding that the Applicants had satisfied their burden of proving an entitlement to such variance relief under N.J.S.A. 40:55D-70(c)(2).

19. As in all variance cases, the Applicants bear the burden of proving both the positive and the negative criteria for all of the requisite variance relief. See, Ten Stary Dom Ptp. v. Mauro, 216 N.J. 16, 30 (2013); Nash v. Board of Adjustment of Morris Tp., 96 N.J. 97 (1984); Cohen v. Borough of Rumson, 396 N.J. Super. 608, 615 (App. Div. 2007); Kogene Bldg. & Dev. v. Edison Tp., 249 N.J. Super. 445, 449 (App. Div. 1991).

As to the Pool Construction (excessive lot coverage and deficient equipment setback) - Positive Criteria for Subsection (c)(1) Variance Relief is Not Satisfied:

20. As to the positive criteria for subsection “(c)(1)” or “undue hardship” variance relief for the pool-specific proposed deviations, specifically the excess lot coverage and insufficient pool equipment setback, the Board finds that the Applicants have not satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and

¹ Pursuant to N.J.S.A. 40:55D-9, “failure of a motion to receive the number of votes required to approve an application for development shall be deemed an action denying the application.” As such, where, as here, a simple majority vote would suffice, a tie vote on a motion to approve the application amounts to a denial of the application.

exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property, as a result of an exceptional or unique condition of the Property or the dwelling lawfully constructed thereon.

21. A predicate issue for the grant of subsection (c)(1) variance relief is that the Applicants must prove that the need for the variance relief “arises out of” (a) the exceptional narrowness, shallowness or shape of the specific property, (b) unique topographic conditions or physical features uniquely affecting the specific property, or (c) an extraordinary and exceptional situation uniquely affecting a specific property or the structures existing thereon. The Board recognizes that a variance under subsection c(1) must be grounded in conditions peculiar to the particular lot, as distinguished from other properties in the zone. If all properties in the area are subject to the same hardships, the remedy is through a revision of the general rule of the ordinance by the governing body, not by variance relief from the land use board. See, *Beirn v. Morris*, 14 N.J. 529, 535-36 (1954). The term “undue hardship” has been variously interpreted, but in *Lang v. Zoning Board of Adjustment*, 160 N.J. 41, 53, 55-56 (1999), the Court made clear that “undue hardship” refers solely to particular physical conditions of the property as those are described in subsection (c)(1) of the statute, and that it does not refer to personal hardship, financial or otherwise. See, *Ten Stary Dom Ptp. v. Mauro*, 216 N.J. at 29; *Jock v. Zoning Bd. of Adjustment*, 184 N.J. 562, 590 (2005) and *Smith v. Fair Haven Zoning Bd.*, 335 N.J. Super. 111, 122 (App. Div. 2000), both citing *Isko v. Planning Bd. of Tp. of Livingston*, 51 N.J. 162, 174 (1968).

22. Here, the Board finds that the Applicants have failed to demonstrate that the hardship is grounded in a condition peculiar to the particular lot, given that the evidence revealed that many of the neighboring lots also are slightly deficient as to lot area and lot width, and these modestly undersized lots are nevertheless able to sustain reasonable residential improvements and

amenities. The Board further finds that the Applicants have not proven that constructing a smaller pool (i.e., less than 672 square feet), or removing a portion of the existing 765 square foot patio, which would reduce the magnitude of the requisite variance relief for excessive impervious coverage, would constitute an undue hardship upon them. In fact, the Board recognizes that the Applicants acknowledged that the proposed pool and/or existing patio could be reduced in size, but that the Applicants voluntarily declined to pursue either course. Indeed, the Applicants conceded that the only hardship that would be suffered by them if the zoning regulations were to be strictly enforced would be of a personal nature. As such, the Board finds that the Applicants failed to satisfy the positive criteria for subsection c(1) variance relief for the excessive lot coverage and deficient pool equipment setback deviations.

As to the Pool Construction (excessive lot coverage and deficient equipment setback) - Positive Criteria for Subsection (c)(2) Variance Relief is Not Satisfied:

23. As to the “positive criteria” for the subsection “c(2)” or “flexible c” variances for the pool-specific proposed deviations, the Board finds that the Applicants have not satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law (“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. In this regard, the Board finds that while the proposal would promote a desirable visual environment and upgrade the housing stock, the detriment associated with the increased coverage and massing, as well as the potential stormwater runoff considerations, would not be substantially outweighed by said benefits. The Board finds that, given the magnitude of the impervious coverage deviation sought and the proposed mass of the residential amenities as compared to the lot area of the Property, the proposal would provide only a relatively modest public benefit, which benefit would not substantially outweigh the relatively significant detriments associated therewith, particularly as to

stormwater runoff and massing.

24. As such, the Board finds that the Applicants failed to satisfy the positive criteria for subsection (c)(1) and (c)(2) variance relief for the excess lot coverage and non-conforming pool equipment setback deviations.

As to the Shed Location (deficient side- and rear-yard setbacks) - Positive Criteria for Subsection (c)(2) Variance Relief Satisfied:

25. As to the positive criteria for subsection “(c)(2)” or “flexible c” variance relief for the shed-specific relief, i.e., the deficient side- and rear-yard accessory setbacks, the Board finds that granting the requested relief will serve multiple purposes of zoning, as set forth in the MLUL. These benefits include providing a desirable visual environment, providing adequate light, air and open space, upgrading the housing stock, and otherwise promoting the general welfare. Here, the shed has existed since 2007, consists of only 66 square feet, and the Applicants have not received any complaints from their neighbors regarding same. In fact, the Applicants have testified that the location of the shed is such that the existing landscaping, which includes mature evergreen trees that are approximately 20 feet tall with canopies between 15 and 20 feet wide, and the existing 6-foot-tall-fence, significantly buffer the shed from view. The Board further recognizes that the shed allows the Applicants to store equipment and other materials that would otherwise have to be stored outside, where they would potentially be visible to the adjacent property owners, and finds that same provides a benefit to the neighborhood. The Board finds that these benefits derived from the proposed development will substantially outweigh the relatively modest detriments associated with the variance relief sought, particularly given the conditions stipulated to by the Applicants. As such, the Board finds that the Applicants satisfied the positive criteria for subsection c(2) variance relief for the shed specific non-conforming accessory side- and rear-yard setback deviations.

Negative Criteria for Subsection “c(1)” and “c(2)” Variance Relief:

26. The Board recognizes that the burden is on the Applicants to prove the negative criteria, just as it is on the Applicants to prove the positive criteria. See, Dallmeyer vs. Lacey Township Bd. of Adjustment, 219 N.J. Super. 134 (Law Div. 1987). As the appellate court stated in Leon N. Weiner vs. Zoning Board of Adjustment, 144 N.J. Super. 509, 516 (App. Div. 1976), certif. den. 73 N.J. 55 (1977), “[i]t was not the burden of the board to find affirmatively that the plan would be substantially impaired (although it did so in the instant case), it was, rather, the burden of the applicant to prove the converse.”

27. The Board recognizes that the “negative criteria” consist of two elements, both of which a variance applicant must prove; that is, that the proposed development can be accomplished (1) without substantial detriment to the public good and (2) without substantially impairing the intent and purpose of the zone plan and zoning ordinance. See, Medici v. BPR Co., 107 N.J. 1, 4 (1987). The former focuses on balancing the positive and negative aspects of a variance request against the purposes of zoning set forth in N.J.S.A. 40:55D-2, whereas the latter is more concerned with establishing the bounds of zoning board action.

As to the Pool Construction and Shed Location - The First Prong (Substantial Detriment) of the Negative Criteria is Satisfied:

28. The Board recognizes that the focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. In Medici v. BPR Co., 107 N.J. at 22-23 n.12 (emphasis added), the Supreme Court explained the substantial detriment phrase as follows:

The first prong of the negative criteria [requires] that the variance can be granted “without substantial detriment to the public good.” In this respect the statutory focus is on the variance’s effect on the surrounding properties. The board of adjustment must evaluate the impact of the proposed use variance upon the adjacent properties and determine whether or not it will

cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.”

29. Here, as to the substantial detriment prong of the negative criteria for the pool-specific variance relief, the Board finds that, while the proposal results in the slight reduction in the light, air, and open space, same will not have a substantially detrimental impact on the character of the existing neighborhood. In this regard, the Board recognizes, that the Applicants are proposing a lot coverage of 31.91%, whereas the existing permitted coverage is already 27.81%. Moreover, the Board finds, and, in fact, the Applicants conceded, that the Applicants could reduce the size, mass and scale of the proposed pool and/or the existing patio, and that doing either, let alone both, of the aforementioned would result in less of a detrimental impact on the public good and the character of the existing neighborhood. However, the Board recognizes that the Property includes landscape buffering and screening, including mature evergreen trees and a six-foot tall fence, which mitigates the detriment such that, on balance, the detriment to the neighborhood does not rise to the level of being substantial. As such, the Board finds that the Applicants have satisfied the requisite first prong of the negative criteria for the pool-specific proposed zoning deviations.

30. As to the substantial detriment prong of the negative criteria for the shed-specific variance relief, specifically the non-conforming side- and rear-yard accessory setbacks, the Board finds that the Applicants have demonstrated that the shed has existed for many years without negatively impacting the neighborhood and finds that the continuation of the non-conforming shed location will not result in substantial detriment to the public good, particularly given the existing buffering. The Board further recognizes that none of the adjacent neighbors expressed concern about the location of the shed. As such, the Board finds that the Applicants have satisfied the requisite first prong of the negative criteria for the shed-specific proposed zoning deviations.

As to the Pool Construction and Shed Location - The Second (Substantial Impairment) Prong of the Negative Criteria is Satisfied:

31. The Board recognizes that 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. The Supreme Court in Medici v. BPR Co., 107 at 5, has made it clear that municipalities should make zoning decisions by ordinance rather than by variance.

32. As to the substantial impairment prong of the negative criteria for the pool- and shed-specific variance relief, the Board finds that the Applicants have demonstrated that the relief can be granted without substantial impairment of the Master Plan and the Zoning Ordinance. Here, the Board finds that the Applicants’ proposal does not rise to the level of substantially impairing the Master Plan or the Zoning Ordinance. The Board finds that the Applicants’ proposal, even given its magnitude in comparison to the size of the Property, would not constitute a rezoning of the Property as pools and sheds are permitted accessory structures in the R-7 Residential Zone. As such, the Board finds that the Applicants have satisfied the negative criteria for the requested pool- and shed-specific deviations.

CONCLUSION

33. Based on the foregoing, the Board finds that the Applicants have failed to demonstrate the positive criteria for the pool-specific deviations, specifically the requested variance relief for the excessive lot coverage and deficient pool equipment setbacks, under either N.J.S.A. 40:55D-70(c)(1) or (c)(2). As such, the Board is constrained to deny the application for the pool and associated improvements, since the Applicants were required to prove both the positive and the negative criteria for all of the variance relief associated therewith. Notwithstanding, the Board finds that the Applicants have satisfactorily demonstrated both the

positive and the negative criteria for the requested variance relief for the shed-specific deviations and that the Applicants are, therefore, entitled to such setback variance relief.

WHEREAS, the Board took action on this application at its meeting on July 7, 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 4th day of August, 2021, that the application of **MICHAEL and WENDY PORR**, for bulk variance relief for the lot coverage and pool equipment setback, be, and is hereby, **DENIED**; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 4th day of August, 2021, that the application of **MICHAEL and WENDY PORR**, for bulk variance relief for the non-conforming accessory (shed) side- and rear- setbacks, 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 apply for and obtain a zoning permit for the shed. The zoning permit application shall include a plan and lot coverage calculations which reflect the following, and same shall be subject to the review and approval of the Township Zoning Officer:
 - A. The shed shall be identified as "proposed" coverage, rather than existing coverage, and the total proposed coverage shall not exceed 5,296 square feet (27.81%);
 - B. The area adjoining the paved driveway and shown on the Plans as "gravel swale," which is not counted as coverage in the calculations shown on the Plans, shall be replaced with grass or other plantings;
 - C. The labeling of the area between the paved driveway and the wood fence, shown on the Plans as "gravel area," shall be revised to indicate "decorative stone groundcover" or to otherwise clarify that this area is not

part of the driveway and not counted as lot coverage;

3. 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;
4. 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
5. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

POOL (LOT COVERAGE AND POOL EQUIPMENT SETBACK) ROLL CALL VOTE:

Those in Favor: Genirs, Pavlosky, Pochtar

Those Opposed: NONE

SHED (SIDE- AND REAR-YARD SETBACKS) ROLL CALL VOTE:

Those in Favor: Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of August 4, 2021.



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

Dated: August 4, 2021