

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

**MINUTES** v3  
Regular Meeting  
December 8, 2021

## **CALL TO ORDER**

Chairwoman Genirs called the meeting to order at 7:37 PM.

## **FLAG SALUTE**

**OPEN PUBLIC MEETINGS STATEMENT** – 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.

## **ROLL CALL:**

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

## **APPROVAL OF MINUTES**

November 3, 2021 – Regular Session - On motion by Ms. Baumann, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as *revised*.

## **APPROVAL OF RESOLUTIONS**

[Ferrier, Graham & Carrie](#); Block 401, Lot 15; 107 Childs Road; ZB21-027 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Pochtar seconded.

Roll call:

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

Motion carried.

[Marchelli, F.& Basile, L.](#); Block 3801, Lot 18; 35 Normandy Court ZB21-026 (approved) – Ms. Baumann moved approval of the resolution as *revised*. Ms. Pochtar seconded.

Roll call:

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

Motion carried.

[Haley, Andrew & Kimberly](#); Block 4002, Lot 3; 5 Dawn Drive; ZB21-029 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call:

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

Motion carried.

**APPOINTMENT OF LANDSCAPE COMMITTEE**

A. Sposato Realty Co., Inc./Sposato Realty LP; Block 1608, Lots 10.02 & 11; 31 & 35 East Craig Street; ZB20-016

Mr. Schley gave a brief history of the subject properties, which are the two (2) remaining properties of a subdivision approved by the Planning Board in 2008. Subsequently, the variance approvals expired and the Applicant appeared before this Board in 2020. As part of the 2020 approval, this Board assumed responsibility from the Planning Board for the evaluation of the landscaping to ensure sufficient vegetative buffering. Ms. Pochtar, Chairwoman Genirs and Ms. Baumann volunteered to conduct the required landscaping evaluation on remaining Lots 10.02 and 11 as requested by the developer.

**PUBLIC HEARING** (continued from 10/06/2021)

Baston 95 LLC; Block 704, Lot 1.01; 95 Morristown Road; Preliminary/Final Site Plan; Use Variance; Bulk Variances; ZB21-015

Present: Frederick B. Zelley, Esq., Attorney for the Applicant  
Afrim Berisha, Applicant

Frederick B. Zelley, Esq., attorney with the firm of *Bisogno, Loeffler & Zelley LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant and noted that at the last meeting during which this application was heard (10/06/2021), the public comment portion of the hearing had begun. Mr. Warner stated that the public's opportunity to offer comments would be continued during this meeting and that any member of the public who had not already spoken, could do so at this time. The following people were duly sworn by Mr. Warner and expressed concerns and made statements in opposition to approval of the application:

- Susan A. Schlichting, 100 Morristown Road – inappropriate architectural style/size
- Terrence Gunning\*, 22 Lone Oak Road – parking, hours of operation, tequila bar
- Blair R. Hunter, 107 Fieldstone Drive – parking, hours of operation, traffic safety, noise
- Ellen Lambert (Kramer), 123 Fieldstone Drive – inappropriate architectural style/size, hours of operation
- Jean Marie Dour\*\*, 28 Franklin Drive – inappropriate architectural style/size, hours of operation, staffing
- Keith Molinari, 27 Franklin Drive – inappropriate architectural style/size, bars, hours of operation
- Phillip J. Kane, 21 Fieldstone Drive – Mr. Zelley objected to the comments made as being not relevant to this proceeding; the objections were sustained
- Margaret Dolan, 15 Parkview Avenue – inappropriate architectural style/size, hours of operation
- Tanya Silas, 31 Franklin Drive – loss of privacy
- Lisa Wagner\*\*\*, 32 Franklin Drive – inadequate on-site parking and buffering, loss of privacy, bars, noise, outdoor dining, proposed building located closer to neighboring homes
- Bernadette Mateo (Barrett), 15 Fieldstone Drive – bars, hours of operation, inadequate parking, traffic safety
- John-Claude Hallak, 12 Franklin Drive – parking, traffic, outdoor terrace/tequila bar

\*Testimony script (read verbatim by Mr. Gunning) entered into evidence as **Exhibit O-1**

\*\*via Facetime (Mr. Zelley had no objection)

\*\*\*Ms. Wagner provided two (2) color photos of her back yard, taken by her on 12/08/2021, **Exhibits O-2, O-3**

Ms. Wagner asked that her written statement be entered into evidence. Mr. Zelley objected since she had not read the statement verbatim as Mr. Gunning had done. The Board sustained that objection.

Hearing no further comments from the public, Chairwoman Genirs closed that portion of the hearing. Mr. Zelley asked for a brief recess to confer with his client.

\* \* \* *The Open Session was recessed at 9:04 PM and reconvened at 9:18 PM.* \* \* \*

In summation, Mr. Zelley noted that this site had hosted a restaurant as a preexisting nonconforming use since the 1930's without incident and opined that the property was particularly suited for this use. He added that if the Applicant had decided to renovate the existing building, he would not have had to appear before this Board for permission but instead, the Applicant opted to build a new state-of-the-art restaurant. He outlined the relief

required, including either a "d-2" expansion of a nonconforming use variance or a "d-1" use variance, depending on how the Board viewed the application and reminded the Board that the Applicant's expert planner, Michael J. Tobia, PP, had provided testimony to satisfy the positive and negative criteria for both a "d-1" and a "d-2" variance along with the remainder of the relief sought. He then outlined the stipulations made by the Applicant to address the public's concerns including parking, hours of operation, noise, capacity, privacy and the proposed tequila bar. Finally, Mr. Zelle stated that the Applicant had provided experts to support the proposal whereas the Objectors had not presented any expert testimony.

After deliberating, the Board concluded that the Applicant had *not* satisfied either the positive or negative criteria required for the variance relief requested. Mr. Tancredi moved to *deny* the application in its entirety (Preliminary/Final Site Plan, Use Variance, Bulk Variances and Exceptions) and to direct the Board Attorney to draft a resolution memorializing the Board's decision. Ms. Baumann seconded.

Roll call:

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

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Ahmed, F./Faizan, A.; Block 2301, Lot 5; 62 Wisteria Way; Bulk Variance; ZB21-030

Present: Andrew K. Wu, PE, PLS, Engineer for the Applicants  
Faizan Ahmed/Anila Faizan, Applicants

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

Faizan Ahmed, Applicant residing at 11 Ridge Road, Green Brook, NJ, testified that the proposed project, demolition of an existing house and construction of a new single family dwelling (62 Wisteria Way), requires relief for exceeding the maximum disturbance allowed in 20-25% slopes (steep slope variance). Mr. Ahmed testified that the proposed dwelling would face Wisteria Way (unlike the existing house) and would complement the character of the neighborhood. He added that there is an easement that runs through approximately the middle of the property, creating a hardship in the placement of the proposed dwelling. Finally, he confirmed that he had spoken to the adjacent property owners and that he had not received any negative comments about the proposal.

Mr. Warner advised that originally the Applicants sought a second variance for disturbance of slopes exceeding 25%, however after clarifying with Mr. Schley and Mr. Quinn that the slope analysis submitted with the application was incorrect, the Applicants determined that that variance would not be required. Mr. Schley and Mr. Quinn also concurred that given the constraints on the property, the only location for the proposed dwelling was within the steep slope (20-25%) area. The Applicants agreed to amend their application to (1) eliminate the variance request for disturbance of slopes greater than 25% and to (2) amend the request for relief for maximum disturbance of slopes 20-25% to 100% since that steep slope area is within the proposed limit of disturbance.

Andrew K. Wu, PE, PLS, engineer with a business address of Edison, NJ, was accepted by the Board as an expert in the field of civil engineering. He addressed the comments in Mr. Schley's memo (11/24/2021) and Mr. Quinn's memo (12/07/2021) to their satisfaction and to the satisfaction of the Board.

Mr. Schley noted that the existing easement was created by Township ordinance pursuant to the Planning Board's approval of the Wisteria Way subdivision. He added that this Board did not have the jurisdiction to vacate the easement.

Mr. Ahmed confirmed that he had taken the photos submitted with the application and that they are an accurate depiction of the property as it currently exists.

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 summation was offered.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for both a c(1)" or "hardship" variance and a "c(2)" or "benefits outweigh detriments" 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. Ms. Baumann seconded.

Roll call:

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

Motion carried.

**COMMENTS FROM MEMBERS OR STAFF** - NONE

**ADJOURN**

Moved by Ms. Pochtar, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 11:01 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 01/05/2022*

12/23/2021 dssw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**GRAHAM AND CARRIE FERRIER  
Case No. ZB21-027**

**RESOLUTION**

WHEREAS, **GRAHAM AND CARRIE FERRIER** (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 a 1,108 square foot expansion/renovation of the existing 1½ story dwelling, on property identified as Block 401, Lot 15 on the Tax Map, more commonly known as 107 Childs Road (the “Property”):

- (1) A variance for a front-yard setback of 38.67 feet to the proposed addition, whereas the existing front-yard setback is 39.2 feet, and the minimum required front-yard setback is 100 feet in an R-1 (3 acre) residential zone, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance;
- (2) A variance for a rear-yard setback of 60 feet to the proposed addition, whereas the existing rear-yard setback is 59 feet, and the minimum required rear-yard setback is 100 feet in an R-1 (3 acre) residential zone, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and
- (3) A variance for a proposed lot coverage of 18.81%<sup>1</sup>, whereas the existing coverage is 17.32%, and the maximum permitted lot coverage in an R-1 (3 acre) residential zone is 15%, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on November 3, 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:

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<sup>1</sup> The Applicants subsequently requested an additional 30 square feet of coverage for a potential future generator and HVAC condenser pad, increasing the proposed coverage from 18.81% to 18.92%.

1. The Board reviewed the application and deemed it to be complete.
2. The Property is an isolated, significantly undersized lot (0.661 acres; 3 acres required) located approximately 500 feet north of Childs Road. The Property is accessed from Childs Road (a public street) by way of Lakeside Slope (a private street) and a driveway easement that traverses two adjoining residential properties. It is presently improved with a 1.5 story frame dwelling, wood barn, porch, brick patio, shed, and gravel drive.
3. The Applicants propose to construct a 1,108 square foot addition to the existing 1½-story dwelling, including one-story additions to the southeast side and rear/southwest of the dwelling, and new second floor space above the existing first floor. The first floor additions include a family room (302 square feet) and a mudroom/entry (78 square feet), and the second floor addition (728 square feet) includes a total of three expanded/renovated bedrooms, one of which is a master suite relocated from the first floor. A 300 square foot terrace is proposed to replace an existing brick patio to the rear of the new family room, and a 296 square foot terrace is proposed between the new mudroom/entry and the existing front entry.
4. Given that the depth of the Property is less than 200 feet (ranging from 126' to 136') and the minimum required front- and rear-yard setbacks are each 100 feet, there is no building envelope, such that a conforming addition is not possible. The requested variances for the front- and rear-yard setback and lot coverage deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).
5. The Applicants' proposal is depicted on Architectural Plans prepared by Jonathon E. Booth, RA, dated August 30, 2021, unrevised, same consisting of four (4) sheets; a Survey prepared by Daniel E. Parker, PLS, dated December 22, 2015, unrevised, same consisting of one (1) sheet; and a compendium of seven (7) photographs of the Property.

6. David Schley, AICP, PP, the Board Planner, and Thomas J. Quinn, PE, CME, the Board Engineer, were duly sworn according to law.

7. Graham and Carrier Ferrier, the Applicants, having an address of 107 Childs Road, were duly sworn according to law. Dr. Graham Ferrier testified that he and his family moved to the Township in 2016 from California. He explained that the existing dwelling is relatively small and needs renovations, particularly since the layout of the dwelling includes a large staircase in the living room. Dr. Ferrier further explained that many of the other dwellings in the neighborhood have been modified and that the proposed improvements will result in the dwelling being more consistent with the neighborhood. He testified that the Applicants are not seeking to expand their dwelling to the maximum extent possible and, instead, proposed to relocate their existing master bedroom from the first floor to the second floor so all of the bedrooms are together on the second floor.

8. Jonathon E. Booth, RA, having a business address of 33 Bullion Road, Basking Ridge, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. Booth testified that the Property is one of the smallest lots in the R-1 residential zone and that it is the size of the lot that creates the need for the requested variance relief. He explained that the Property, as well as six other properties, are served by a private driveway and does not front on a public road. Mr. Booth further explained that, given the size of the lot, if the minimum required setbacks are provided (i.e., 100' for the front setback and 100' for the rear setback), there is no building envelope.

9. Mr. Booth testified that the existing dwelling consists of 1,500 square feet and has three (3) bedrooms. He explained that the Applicants propose to increase the square footage by approximately 1,100 square feet and to maintain the existing three (3) bedrooms, albeit one of

the bedrooms is the master bedroom relocated from the first floor and the other two bedrooms will be expanded. Referencing Sheet 2 of the Architectural Plans, Mr. Booth explained that the first floor consists of three rooms – a kitchen, living area, and a master bedroom and that the second floor is only 20 feet by 20 feet with 10-inch-thick concrete walls and two bedrooms. He further explained that the existing staircase is located such that the layout of the dwelling is not conducive to a functional household. Mr. Booth testified that the proposed improvements are intended to be consistent with the existing dwelling, as well as the overall neighborhood.

10. Mr. Booth testified that the Applicants' proposal requires front- and rear-yard setback and lot coverage variance relief. He explained that the net increase in coverage is 428 square feet, due to the removal of some existing coverage and the construction of the proposed improvements on already existing coverage (an existing open porch and terrace). Mr. Booth testified that a significant amount of the existing coverage is created by the private driveway that serves the properties to the north, and he noted that, if the driveway were not included, the proposal would be conforming. Mr. Booth contended the proposal constitutes a reasonable and sensible improvement to the Property.

11. Mr. Booth introduced into evidence, as **Exhibit A-1**, a portion of the architectural plans with highlighting. Referencing same, he described the current and proposed layout and the exterior changes to the dwelling. Mr. Booth explained that the dwelling has not had much ongoing maintenance or renovation prior to the Applicants' purchase of the Property and that its age has started to show. The Applicants stipulated that the exterior of the additions will be substantially similar in architectural design, materials, and color as the balance of the exterior of the dwelling.

12. On questioning, Mr. Booth advised that no tree removal is proposed. On further questioning, Mr. Both testified that he had taken the photographs submitted with the application materials in July of 2021 and confirmed that they constitute an accurate depiction of the Property as it currently exists.

13. On questioning, Dr. Ferrier explained that the current dwelling does not have central air conditioning but that they plan to install miniature HVAC units to create a two-zone system with a miniature condenser unit. On discussion, the Applicants requested additional coverage for the proposed condenser unit and a generator pad, should the Applicants desire to install a generator in the future. Mr. Schley advised that, if the proposed coverage were increased by 30 square feet, the proposed coverage would increase from 18.81% to 18.92%.

14. On questioning as to the stormwater management, Mr. Booth explained that the Property is relatively flat (the high point is in the northwest corner and the lower point is at the southeast corner) and the runoff associated with the new coverage will be directed to subsurface drains. Mr. Quinn noted that, pursuant to the Ordinance, the Applicants are not required to provide additional stormwater management measures as part of the proposal. On questioning, Mr. Booth explained that he would prefer a portion of the drainage system be underground to ensure that it drains as far away from the dwelling as possible.

15. The Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth in the October 26, 2021 Review Memorandum prepared by Mr. Schley and the October 29, 2021 Review Letter prepared by the Board Engineer.

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

## DECISION

17. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the front- and rear-yard setback and maximum lot coverage deviations, under both of the alternative bases for such relief under N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

### The c(1) Positive Criteria:

18. As to the positive criteria for subsection (c)(1) or “undue hardship” variance relief, 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 significantly undersized (0.661 acres v. 3 acres required). Here, the 0.661 acre lot is less than one-quarter the minimum lot area required in the R-1 (3 acre) Residential Zone and, for comparison purposes, the Applicants’ lot coverage would be a conforming 4.15% if all of the improvements were located on a conforming three (3) acre lot.

19. The Board further recognizes that the pre-existing nonconforming lot coverage exceeds the maximum permitted lot coverage by 669 square feet (2.32%) and that the proposed additions and terraces, combined with the proposed removal of an existing porch and patio/walkway, result in a proposed net increase in coverage of 428 square feet (1.49%). The Board notes that the total proposed coverage of 5,447 (5,417 + 30) square feet exceeds the maximum permitted coverage of 4,320 square feet by 1,127 square feet and that all of the excess coverage can be attributed to the approximately 165 foot long section of driveway that serves the

adjoining residences. As to the setback relief, the Board recognizes that the depth of the Property (front/northeast to rear/southwest) is less than 200 feet (it ranges from 126' to 136'), and the minimum required 100 foot front yard and 100 foot rear-yard setbacks result in no building envelope, such that a conforming addition is not possible. The Board further 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. Additionally, the Board is satisfied that the Applicants cannot obtain additional property to bring the lot area into, or closer into, conformity with the Ordinance requirements.

20. Based upon the foregoing, the Board finds that the Applicants have satisfied the positive criteria for subsection c(1) variance relief for the requested zoning deviations.

**The c(2) Positive Criteria:**

21. As to the positive criteria for subsection (c)(2) or “flexible c” variance relief, the Board finds that the proposed development will serve multiple purposes of zoning and that the benefits derived from the proposal will substantially outweigh the modest detriment associated therewith. Here, the Board finds that the Applicants have demonstrated that the proposal will advance the purposes set forth in paragraphs (a), (c), and (i) as set forth in Section 2 of the Municipal Land Use Law (“MLUL”), in that it will promote the general welfare, provide adequate light, air and open space, and promote a desirable visual environment, as well as upgrade the housing stock. The Board further finds that the benefits derived from the proposed development will substantially outweigh the relatively modest detriments associated with the variance relief sought, particularly given the conditions stipulated to by the Applicants. In this regard, the Board recognizes that by granting the requested relief, the Applicants will be able to

improve the safety and functionality of the existing improvements, while also improving the appearance of the Property.

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

**The Negative Criteria:**

23. Finally, the Board finds that the Applicants have satisfied the negative criteria for the requisite variance relief by demonstrating that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not be inconsistent with the neighborhood. In this regard, the Board notes that no member of the public objected to the Applicants’ proposal. As to the “substantial impairment” prong of the negative criteria, the Board finds that the Applicant has demonstrated that granting the requested relief certainly will not rise to the level of a rezoning of the Property, particularly since all of the proposed improvements are permitted within the R-1 Residential Zone. As such, the Board finds that the Applicants have satisfied both the positive and negative criteria for the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

WHEREAS, the Board took action on this application at its meeting on November 3, 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 8<sup>th</sup> day of December, 2021, that the application of GRAHAM

AND CARRIE FERRIER for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
2. The Applicants shall revise the plans to depict the existing septic system including the septic disposal field to ensure that no improvements are proposed within this area, and same shall be submitted prior to the issuance of a construction permit;
3. The Applicants shall submit a tree protection plan, same to be subject to the review and approval of the Township Engineering Department, prior to any land disturbance;
4. Soil erosion and sediment control measures shall be provided in accordance with Section 21-42.11.b.2 of the Ordinance, same to be subject to review and approval by the Township Engineering Department prior to issuance of a construction permit;
5. The Applicants shall revise the plans to depict the proposed disturbance boundary and soil erosion and sediment control measures in accordance with the Township's requirements even if the limit of disturbance remains below the 5,000 square feet that would otherwise require certification from the Soil Conservation District;
6. The exterior of the proposed addition shall be substantially similar in architectural components, materials, and colors to the exterior of the balance of the dwelling;
7. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
8. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
9. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor:       Baumann, Cambria, Genirs, Kraus, 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 December 8, 2021.



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

Dated: December 8, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**FEDERICO MARCHELLI AND LUCIANA BASILE MARCHELLI  
Case No. ZB21-026**

**RESOLUTION**

WHEREAS, **FEDERICO MARCHELLI AND LUCIANA BASILE MARCHELLI** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance relief in connection with the construction of a 595 square foot inground swimming pool with surrounding coping/patio to the rear of the existing dwelling, located on property identified as Block 3801, Lot 18 on the Tax Map, more commonly known as 35 Normandy Court (the “Property”):

A variance to install an inground pool such that it is not behind the rear building line of existing residential structures on adjoining lots, in violation of Section 21-18.1 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on November 3, 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 a 40,437 square foot (0.928 acre) lot fronting on Normandy Court and located in the RC-4 Residential Cluster Zone. The Property is improved with a two-story, single-family dwelling, wood deck, frame shed, and associated drive- and walk-ways.
3. The Applicants seek approval to construct a 17’ by 35’ (595 square foot) inground swimming pool and 371 square feet of surrounding coping/patio to the rear of the existing

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

4. The Applicants’ proposal is depicted on a Pool Grading Plan prepared by Mark J. Mantyla, P.E., P.P., P.L.S., dated May 19, 2021, last revised September 22, 2021, same consisting of one (1) sheet; a Survey prepared by Richard S. Zinn, P.L.S., dated August 19, 2017, unrevised, same consisting of two (2) sheets; and three (3) photographs of the Property.

5. The Property is located in an RC-4 residential cluster zone. The requested variance for the pool location is 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 Thomas J. Quinn, P.E., C.M.E., the Board Engineer, were duly sworn according to law.

7. Luciana Basile Marchelli and Federico Marchelli, the Applicants, having an address of 35 Normandy Court, were duly sworn according to law. Mrs. Marchelli testified that she and her husband moved to the United States from Argentina fourteen (14) years ago to start a family and their children have been begging for a pool. Mrs. Marchelli testified that the Property is irregularly shaped and located on a cul-de-sac.

8. On questioning, Mrs. Marchelli testified that she had taken the photographs submitted with the application materials in the Summer of 2021 and confirmed that they accurately depict the Property as it presently exists. Mrs. Marchelli testified that, when she spoke to her neighbors, only the owner of the lot to rear of the Property (Lot 25 – 9 Edward Court) expressed concern about the impact the proposal would have on stormwater runoff. Mrs. Marchelli testified that the Property is wooded and that the Applicants intend to plant additional landscaping to buffer the proposed black aluminum fence.

9. Mark J. Mantyla, P.E., P.P., P.L.S., having a business address of 139 West Mountain Road, Sparta, 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, professional planning, and land surveying. Mr. Mantyla described the Property an oversized lot located in the RC-4 Residential Cluster Zone and along the bulb of the Normandy Court cul-de-sac. He contended that it is the shape, location, and orientation of the existing lawfully constructed structures that render it impossible for the Applicants to comply with the pool location requirements.

10. Referencing the October 26, 2021 Review Memorandum prepared by the Board Planner, Mr. Mantyla testified that the Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth therein. On discussion, Mr. Mantyla testified that the Applicants intend to remove all but 10 of the 140 cubic yards of soil from the Site. Mr. Schley noted that the Applicants are not required to obtain certification from the Somerset-Union Conservation District, but will be required to comply with the Township soil erosion and sediment control requirements. Mr. Mantyla confirmed that the plans would be revised to depict the drainage easement and all fencing.

11. Referencing the October 29, 2021 Review Letter prepared by the Board Engineer, Mr. Mantyla testified that the Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth therein. Mr. Quinn noted that most of the proposed additional coverage is attributable to the pool surface and that the net increase in coverage is approximately 403 square feet, resulting in the project being exempt from stormwater management consideration. Mr. Quinn explained that the limit of disturbance shown on the plans is unrealistic and should be expanded to at least 10 feet around the patio for grading activity. Mr. Mantyla noted that the trees beyond the limit of disturbance in the rear of the Property are evergreens. Mrs.

Marchelli testified that there is a larger Red Maple that will need to be removed because it is located in the proposed pool location and it is displaying visible decay and woodpecker holes. Mr. Mantyla explained that there are three additional trees that were not labeled as being removed, but that would be removed based on the recommendations of the Applicants' arborist.

12. On questioning, Mrs. Marchelli testified that the only pool lighting proposed is within the pool itself. She explained that there is a gate between the Property and adjacent Lot 25 to the rear so that their children and their neighbors' children can play. Mrs. Marchelli testified that the Applicants propose to install a 5-foot-tall black aluminum fence along the rear portion of the Property and that they will work with their landscaper to add additional plantings. Mr. Mantyla contended that Lot 25 to the rear is most affected by the proposal, but that the impact on said lot will be mitigated by the existing and proposed evergreens. Mrs. Marchelli confirmed that the Applicants intend to plant eight (8) additional evergreens having a height of 6 feet at planting.

13. On questioning, Mr. Mantyla testified that the Property slopes to the south and all of the stormwater runoff goes toward Lots 23 and 24, rather than Lot 25. He further testified that he does not anticipate the proposal having any impact on the existing drainage conditions, particularly since the total increase in coverage is only 403 square feet (excluding the pool water surface). The Applicants stipulated, as a condition of approval, to submitting a tree protection, removal and replacement plan, same to be subject to the review and approval of the Township Planner.

14. On discussion of whether the Applicants could construct a larger patio without having to return to the Board for further approval, Mr. Schley explained that the Applicants are not exceeding the maximum permitted lot coverage and could do so, but that same could result in the Applicants exceeding the 1,000 square foot threshold that would trigger the need for additional

stormwater management measures. He suggested that, if the Board is concerned about stormwater management, it could include a condition of approval in the resolution that would ensure that the Engineering Department make sure any additional coverage proposed in the future could be accommodated by the existing stormwater management system.

15. On questioning, Mr. Schley confirmed that there is no compliant location at which the pool could be located. The Applicants stipulated, as a condition of approval, to complying with the “best management practices” when discharging pool water.

16. Robert Cantono, 40 Normandy Court, questioned the need for a fence around the perimeter of the entire Property, rather than just around the pool. The Applicants clarified that the fence only surrounds a portion of the rear yard. Mr. Cantono, having been duly sworn according to law, expressed concern about the location of the pool and the impact it could have on his privacy and the aesthetics of the overall neighborhood.

17. Mr. Mantyla testified that the pool is set back approximately 100 feet from the side property line, whereas only 20 feet is required and that locating the pool elsewhere would require it to be closer to the rear property line. He contended that the proposed pool location is ideal, particularly given the distance from the pool to the property lines and the existing and proposed landscaping. Mrs. Marchelli explained that she did not want to locate the pool immediately to the rear of the existing deck because she was concerned children might try to jump into the pool from the deck. Mr. Mantyla contended that the pool would have limited visibility from the right-of-way given its location to the rear of the dwelling and the nature of the existing and proposed landscape buffering. Mrs. Marchelli confirmed that the Applicants are equally concerned about their privacy and do not want the pool to detract from the neighborhood. On discussion, the Applicants stipulated, as a condition of approval, to providing additional landscaping if deemed necessary by

the Board Planner to further screen the pool from Mr. Cantono's property at 40 Normandy Court.

### **DECISION**

18. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief as to the pool location under N.J.S.A. 40:55D-70(c)(1).

#### **The Subsection c(1) Positive Criteria:**

19. As to the positive criteria for the subsection c(1) or "hardship" variance relief, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants, as the owners of the Property. The Board finds that the exceptionally unique physical features affecting the Property include the layout and configuration of the existing lots/dwellings.

20. In this regard, the Board recognizes that the Property adjoins a total of six single-family residential lots, and that the proposed pool location is compliant as it relates to the dwellings on five of those lots, but not as to the dwelling on Lot 2. Here, the Applicants' dwelling and the dwelling on adjoining Lot 2, to the northwest side, are oriented toward the bulb of the Normandy Court cul-de-sac, and as a result, the fronts of the two dwellings are angled toward each other, making compliance with the pool location requirement impossible for both properties. Therefore, the Board determines that the requested variance from such strict application of the regulations is warranted so as to relieve the Applicants from such exceptional difficulties or undue hardship. The Board further finds that the hardship that would result, if the pool location requirement was strictly applied, would not have been caused by conditions that were "self created" by the Applicants or any predecessor-in-title.

21. The Board recognizes that the legislative intent underlying the pool location ordinance was to locate more active uses in rear yards and to “line up” rear yard uses for adjacent neighbors. The Board concludes that permitting the Applicants to locate the pool as proposed does not frustrate the stated intent of the pool location ordinance, particularly given the location of the Property and adjoining lots on a cul-de-sac and that the pool area will be appropriately buffered by the existing and proposed landscaping. As such, the Board finds that the Applicants have demonstrated the positive criteria for the requested pool location variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

**The Subsection c(1) Negative Criteria:**

22. The Board further finds that the Applicants have satisfied the negative criteria; that is, they have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance. As to the “substantial detriment” prong of the negative criteria, the Board recognizes that the proposed pool location complies with regard to five out of the six properties and that the Applicants have stipulated to installing additional landscaping, if deemed necessary, to provide adequate screening of the pool. Additionally, the Board finds that the stipulated conditions will mitigate the modest detriment associated with the Applicants’ proposal. As to the “substantial impairment” prong of the negative criteria, the Board finds that the requested relief is relatively modest in nature and magnitude and certainly does not rise to the level of a rezoning of the Property. As such, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested pool location variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

WHEREAS, the Board took action on this application at its meeting on November 3, 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 8th day of December, 2021, that the application of **FEDERICO AND LUCIANA BASILE MARCHELLI**, as aforesaid, be, and is hereby, granted, subject to the following conditions:

- 1) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- 2) The Applicants shall, if deemed necessary by the Township Planner in his reasonable discretion, install additional landscape screening between the Property and adjacent Lot 2 so as to provide sufficient screening between the subject pool area and Lot 2;
- 3) The Applicants shall submit a tree protection, removal, and replacement plan, same to be subject to the review and approval of the Township Planner prior to any land disturbance;
- 4) Any exterior lighting shall be downward directed or otherwise shielded so as to eliminate any light spillage onto adjacent properties;
- 5) Soil from the pool excavation must be removed from the Site unless the Applicants submit a grading plan showing where the soil will be used on the Site, same to be subject to the review and approval the Township Engineering Department prior to any land disturbance.
- 6) The drainage easement shown on the submitted boundary survey prepared by Brunswick West shall be shown on the pool grading plan, and all fencing proposed within the easement shall be subject to review and approval by the Township Engineering Department. Modifications to the fence and/or installation of an additional gate(s) may be required prior to approval of any fencing within the easement;
- 7) The Applicants shall obtain certification from the Somerset-Union Conservation District, if applicable, or provide soil erosion and sediment control measures in accordance with the Township requirements;
- 8) The Applicants are advised that while no stormwater management measures are required as part of this proposal, any changes to this proposal or any future proposals that generate additional lot coverage shall be subject to the review of the Township Engineering Department given the expressed concern as to the sufficiency of the

existing stormwater management system being able to handle additional stormwater runoff;

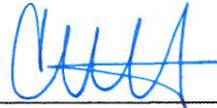
- 9) The Applicants shall revise the note above the plan legend to state that the 'proposed increase in impervious coverage including the water area is 998 square feet' and the exempt note shall also reflect the net increase of impervious coverage for stormwater management purposes excluding the water surface area;
- 10) The Applicants shall revise the engineering plans to include the source of the topographical data and shall revise the grading plans to include all relevant topographical information;
- 11) The Applicants shall revise the limit of disturbance to include at least 10 feet beyond the proposed patio area to accommodate grading activities
- 12) 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;
- 13) The Applicants shall construct the proposed improvements in accordance with the testimony given during the hearing and the plans submitted to the Board;
- 14) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- 15) The 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
- 16) 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 has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor:                   Baumann, Cambria, Genirs, Kraus, 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 December 8, 2021.



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

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ANDREW AND KIMBERLY HALEY  
Case No. ZB21-029**

**RESOLUTION**

WHEREAS, **ANDREW AND KIMBERLY HALEY** (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 expansion/renovation of the existing two-story dwelling, including a two-story 1,065 square foot addition to the rear of the dwelling, and (2) the replacement of an existing 818 square foot inground swimming pool with a 984 square foot inground swimming pool, with 863 square foot patio/walkway surround and a 351 square foot patio adjoining the proposed addition, all to be located on property identified as Block 4002, Lot 3 on the Tax Map, more commonly known as 5 Dawn Drive (the “Property”):

A variance for a proposed lot coverage of 17.22%, whereas the existing lot coverage is 15.45%, and the maximum permitted lot coverage in the R-4 (1 acre) Residential Zone is 15%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on November 3, 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 a slightly undersized and slightly narrow, corner lot with frontage on Dawn Drive and Lake Road, located in the R-4 (1 acre) Residential Zone. It is presently improved with a two-story frame dwelling, frame shed, paver patio, macadam driveway, inground

pool with concrete surround, and walkways.

3. The Applicants proposed to expand the existing two-story dwelling by constructing a two-story 1,065 square foot addition to the rear of the dwelling. The 388 square foot first floor addition includes an expanded kitchen and family room, and the 677 square foot second floor addition provides for the expansion of four existing bedrooms, including a master suite and a new office. The Applicants also proposed to replace the existing 818 square foot inground pool with a new 984 square foot inground pool in essentially the same location, with an 863 square foot patio/walkway surrounding the pool and a 351 square foot patio adjoining the proposed addition.

4. The Applicants' proposal is depicted on Architectural Plans prepared by Gregory Ralph, RA, dated September 13, 2021, last revised September 29, 2021, same consisting of eight (8) sheets; a Project Status plan also prepared by Mr. Ralph, dated August 23, 2021, unrevised, same consisting of one (1) sheet; and a Survey prepared by Andrew J. Kirtland, PLS, dated June 9, 2021, unrevised, same consisting of one (1) sheet.

5. The requested variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).

6. David Schley, PP, AICP, the Board Planner, and Thomas J. Quinn, PE, CME, the Board Engineer, both were duly sworn according to law.

7. Andrew and Kimberly Haley, the Applicants, having an address of 5 Dawn Drive, were duly sworn according to law. Mrs. Haley testified that the family loves the community and is seeking to renovate their dwelling to better accommodate them. Mr. Haley explained that he and his wife saw opportunity in the dwelling, which was renovated in the 1980s. He further explained that their proposed improvements will make the dwelling more consistent with the neighborhood and modern standards. Mr. Haley testified that the Applicants are also seeking to increase the existing pool area and pool surround because the deck is too narrow and the support structures

appear to be cracking. He contended that the proposal will allow them to provide a safer environment for their family.

8. Gregory Ralph, RA, having a business address of 1924 US Highway 22 East, Bound Brook, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. Ralph explained that the Applicants are seeking variance relief for a proposed lot coverage of 17.22%, whereas the existing coverage is 15.45%, and the maximum permitted coverage in the R-4 Zone is 15%. He contended that the net impact on the lot is minor given the existing development on the Property and the design of the proposed improvements. Mr. Ralph noted that the Property is a slightly undersized and narrow corner lot with two front-yard setback requirements. He testified that the Property is naturally screened by the existing landscaping.

9. Mr. Ralph described the existing dwelling and the proposed expansion thereof. He explained that the proposed additional coverage includes the addition, front porch expansion, a larger pool, and a larger patio/walkway around the pool. He explained that there are a number of walkways on the Property (totaling approximately 405 square feet) and that they will be removed to offset the increased coverage. Mr. Ralph further explained that the net increase in square footage is 714 square feet, which equates to a proposed coverage of 17.22% - an increase of 1.77% above the existing coverage.

10. The Applicants stipulated to complying with the comments and requirements set forth in the October 26, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley; and the October 29, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn. The Applicants further stipulated that the existing pool will be professionally modified. Mr. Ralph testified that the Applicants do not intend to remove any trees, but that they may be constrained to

remove one tree located near the proposed improvements. The Applicants stipulated, as a condition of approval, that they would provide a tree protection, removal, and replacement plan, as applicable.

11. On questioning, Mr. Ralph testified that the stormwater runoff patterns will not change and reminded the Board that the pool, which adds approximately 2% of the total impervious coverage, is considered stormwater neutral and will actually contain runoff. On questioning, Mr. Haley testified that the pool equipment is currently located near a shed on the southern side of the Property and that same will remain. The Applicants stipulated that they will comply with the pool equipment and pool fencing requirements.

12. On discussion, Mr. Haley mentioned that the Applicants are planning on covering a portion of the patio with a one-story low-height roof that will be open on all sides. On questioning, Mr. Ralph testified that the roof will be no higher than 10 feet because a higher roof would obscure the second floor bedroom windows. The Applicants confirmed that they are not planning on installing a fire pit.

13. On discussion of the existing fence, Mr. Schley explained that it is non-conforming because solid fences are not permitted and that the Applicants would need to obtain variance relief if the fence is ever removed and replaced. He noted that the Applicants could install a fence around the pool that would comply with the pool fencing requirements, thereby allowing the Applicants to maintain their existing fence.

14. Todd Edelstein, 172 Riverside Drive, questioned whether the Applicants intended to enclose the outdoor patio area and the Applicants stipulated, as a condition of approval, that same would remain open.

## DECISION

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

16. As to the positive criteria for the subsection “c(1)” or “hardship” variance for the requested 896 square feet of excess impervious coverage, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants. The Board finds that the exceptionally unique physical features affecting the Property include the undersized and narrow nature of the Property (albeit the deficiency is relatively modest). The Board recognizes that the Applicants’ lot coverage would be closer to conforming at 16.0% if all of the improvements were located on a conforming one acre lot, rather than the lot coverage of 17.22% as proposed for this slightly undersized lot. The Board further notes that the location and configuration of the dwelling is such that it requires a side-loading garage, which, by itself, requires significant additional pavement and, hence, significant additional lot coverage. Therefore, the Board finds that the requested variance from such strict application of the regulations is warranted, so as to relieve the Applicants from such exceptional difficulties or undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced. The Board further finds that the hardship that would result from the strict application of the zoning ordinance provision would not be by virtue of a condition that was “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for variance relief pursuant to

N.J.S.A. 40:55D-70(c)(1).

17. As to the positive criteria for the subsection “c(2)” or “flexible c” variance relief for the excessive lot coverage, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviation from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal promotes a desirable visual environment, improves the housing stock, and otherwise promotes the general welfare. In this regard, the Board recognizes that the pool itself, which is stormwater neutral, constitutes approximately 2% of the overall lot coverage, whereas the total exceedance is 2.22%. Further, the Board finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated conditions set forth below, and the fact that the expanded pool surround, would be safer than the existing pool surround which is narrow and in poor condition. As such, the Board finds that the Applicants have satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70(c)(2).

18. 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 Master Plan and Zoning Ordinance. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not be substantially out of character with the existing neighborhood and will not have a substantial negative impact on the surrounding properties. In this regard, the Board finds that the Applicants have demonstrated that the proposed improvements will be sufficiently screened, both by the existing vegetation and the dwelling itself, and that the conditions stipulated to by the Applicants will further alleviate any

detrimental impact of the proposed improvements on adjacent properties. The Board also recognizes, in this regard, 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 the Applicants have demonstrated that the proposal is not inconsistent with the Master Plan or Zoning Ordinance, particularly since pools are permitted accessory structures. The Board finds in this regard that the requested deviation is relatively modest in nature and certainly does not rise to the level of constituting a rezoning of the Property. As such, the Board finds that the Applicants have satisfied the negative criteria for variance relief pursuant to both of the alternative bases for such relief under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

19. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested lot coverage variance relief under both subsection (c)(1) and subsection (c)(2).

WHEREAS, the Board took action on this application at its meeting on November 3, 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 8th day of December, 2021, that the application of **ANDREW AND KIMBERLY HALEY**, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- (2) The Applicants shall satisfy all outstanding municipal tax and other municipal obligations to date;
- (3) The Applicants shall submit a tree protection, removal and replacement plan, as applicable, same to be subject to the review and approval of the Township

Engineering Department prior to any land disturbance;

- (4) Soil erosion and sediment control measures shall be provided in accordance with Section 21-42.11.b.2 of the Ordinance, subject to review and approval by the Township Engineering Department prior to issuance of a construction permit;
- (5) Soil from the pool excavation shall be removed from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (6) The submitted plans shall be revised as follows, prior to issuance of a construction permit:
  - a. The plot plan shall show conforming locations of proposed pool equipment and code-compliant pool safety barrier/fencing.
  - b. The 200' Tax Map Reference map on sheet V-1 shall be corrected.
  - c. The plot plan shall show existing and proposed grading in the rear yard, including around the patio that adjoins the addition, and including any proposed retaining walls and/or steps. The building elevations show the patio to be level with the first floor, which is  $\pm 3'$  above ground level, however, the means of accommodating this difference in elevation is not shown on the plot plan.
- (7) Since the proposal involves partial demolition of the existing dwelling, the Applicants are 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 Applicants shall be required to return to the Board for further variance approval;
- (8) The Applicants shall revise the plans to include a realistic limit of disturbance and soil erosion and sediment control measures shall be depicted on the plans in accordance with the Ordinance requirements;
- (9) The covered portion of the rear patio shall not exceed approximately 351 square feet in footprint, shall not exceed 10 feet in height, and shall remain open, i.e. covered with a roof but not enclosed on the sides except for columns and/or open railings;
- (10) The Applicants shall revise the plans to accurately reflect the Property on the 200' tax map (the line is drawn around the wrong lot);
- (11) The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission attached to the March 1, 2021 Review Memorandum of the Township Planner;

- (12) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (13) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (14) The Applicants shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
- (15) Pursuant to Section 21-5.10 of the Land Development Ordinance, the 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, Cambria, Genirs, Kraus, 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 December 8, 2021.



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

Dated: December 8, 2021.