

**BERNARDS TOWNSHIP
BOARD OF ADJUSTMENT
MINUTES
Regular Meeting
February 3, 2010**

Board Chairman Orr called the regular meeting to order at 7:30 p.m.

ROLL CALL:

Members present: Lasko, Miller, Orr, Plaza, Schulenburg, Viola, Ross, Rhatican

Members absent: none

Members late: none

Board Attorney Steven Warner, Esq., Board Engineer Peter Messina, and Board Planner David Schley were also present.

OPEN MEETING STATEMENT

“In accordance with the requirements of the Open Public Meetings Law, notice of this regular 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, Bernardsville, NJ, the Courier News, Bridgewater, NJ, and the Star-Ledger, Newark, NJ and was filed with the Township Clerk all on January 11, 2010. We received no requests for 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 p.m. and no new witnesses or testimony heard after 10:30 p.m.”

APPROVAL OF MINUTES

The motion was made by Mr. Lasko and seconded by Mr. Plaza to approve the minutes of January 6, 2010, reorganization meeting, as drafted.

Roll call:

Aye: Lasko, Miller, Plaza, Viola, Ross, Rhatican, Orr
(Mr. Schulenburg was ineligible to vote)

Motion carried

APPROVAL OF ESCROW CHARGES AGAINST ESCROW ACCOUNTS

The motion was made by Mr. Plaza and seconded by Mr. Miller to approve escrow charges from David Schley for January 2010, Steven Warner, Esq. for December 2009, and from John Belardo, Esq. for December.

APPROVAL OF RESOLUTIONS

RESOLUTION – Jaffa Building, LLC – Block 11401, Lot 26 (formerly Block 187, Lot 33.12) – Extension of Bulk Variance Approval to February 4, 2011

The motion was made by Mr. Plaza and seconded by Mr. Lasko to approve the resolution as drafted.

Roll call:

Aye: Lasko, Miller, Plaza, Viola, Ross, Orr
(Mr. Schulenburg and Mr. Rhatican were ineligible to vote.)

Motion carried

RESOLUTION - Schmall, Paul and Patricia – Block 2905, Lot 12 – Extension of Bulk Variance Approval to November 15, 2010

The motion was made by Mr. Lasko and seconded by Mr. Miller to approve the resolution as drafted.

Roll call:

Aye: Lasko, Miller, Plaza, Viola, Ross, Orr
(Mr. Schulenburg and Mr. Rhatican were ineligible to vote)

Motion carried

RESOLUTION - Moshier, Michael and Elizabeth – Block 2602, Lot 13 – Bulk Variance

The motion was made by Mr. Plaza and seconded by Mr. Lasko to approve the resolution as drafted.

Roll call:

Aye: Lasko, Miller, Plaza, Viola, Ross, Orr
(Mr. Schulenburg and Mr. Rhatican were ineligible to vote)

Motion carried

RESOLUTION - Gannon, John and Kristen – Block 2906, Lot 27 – Bulk Variance

The motion was made by Mr. Miller and seconded by Mr. Ross to approve the resolution as drafted.

Roll call:

Aye: Lasko, Miller, Plaza, Viola, Ross, Orr
(Mr. Schulenburg and Mr. Rhatican were ineligible to vote)

Motion carried

Mr. Orr announced that the application by Steven Stowarz for a bulk variance on 340 Mountain Road was carried to April 7, 2010 by request of the applicant. Mr. Orr also announced that the special meeting of February 11, 2010 was cancelled and that the application by Liberty Corner Presbyterian Church was carried to March 11, 2010.

COMPLETENESS REVIEW & PUBLIC HEARING – DOUGHER, Brendan – Block 6301, Lot 34.04 – 22 Belmont Court – Bulk Variance

Rinaldo Forzani, Esq. represented the applicants. He presented William Hollows, PE, Murphy & Hollows, Stirling, NJ who was sworn in. Mr. Schley and Mr. Messina were sworn in.

Mr. Hollows explained that the applicants wish to build a pool in their rear yard. The location of this proposed pool is nonconforming since it is not located behind the rear building line of the adjacent house. He said that a fence was installed in the

existing conservation easement. Mr. Hollows submitted as Exhibit A-1 a colored rendering of the submitted plot plan showing the location of the rear building line of the adjacent residence.

Public hearing was opened for questions of this witness; hearing none, the public portion of this hearing on this witness was closed.

Mr. Forzani presented Mr. Brendan Dougher, 22 Belmont Court who was sworn in. Mr. Dougher said that he had planted four trees as a buffer to his neighbor and planned to plant an additional two trees. There was discussion on where to locate these additional trees to provide an effective buffer. With regards to the fence installed in the conservation easement on this lot, Mr. Forzani said the applicants did not want to relocate the fence, and the developer was applying to the Planning Board in order to modify the terms of the easement. Mr. Schley said that granting a certificate of approval for the pool would be subject to that modification being approved by the Planning Board.

The motion was made by Mr. Schulenburg and seconded by Mr. Lasko to deem the application complete and to direct the Board Attorney to draft a resolution approving the application subject to the comments in Mr. Schley's January 22, 2010 memo re the height of the evergreen tree buffer, soil erosion and sediment control measures, and stipulating that the existing fence would be removed from the conservation easement unless otherwise approved by the Planning Board.

Roll call:

Aye: Lasko, Miller, Plaza, Schulenburg, Viola, Ross, Orr
Motion carried

COMPLETENESS REVIEW & PUBLIC HEARING – GALLO, MICHAEL and NANCY – Block 5203, Lot 14 – 383 Grist Mill Drive – Bulk Variance

Michael Gallo, 383 Grist Mill Drive, Mr. Schley and Mr. Messina were sworn in. Mr. Gallo explained that he was applying for relief from the rear yard setback requirement for an existing deck. Mr. Schley explained that, due to the location of the house on the lot, the rear yard setback is measured from the west. Mr. Schley said that there is no building envelope with the current bulk requirements.

Board members asked about the date of construction of the deck, the shed location and the tree house currently located on the property line with Mr. Gallo's adjacent neighbor to the south. Board members noted that the shed location was nonconforming and asked that Mr. Gallo check with his neighbors about the tree house. They asked that he submit photographs of the tree house and shed.

Mr. Gallo agreed to carry the application to the March meeting. Mr. Warner announced that the application was carried, no further notice required.

COMPLETENESS & PUBLIC HEARING – ANTOGIOVANNI, PAUL – Block 2903, Lot 10 – 39 Woodstone Road – Bulk Variance

Paul Antogiovanni, 39 Woodstone Road, and Mr. Schley and Mr. Messina were sworn in. Mr. Antogiovanni explained that he wants to expand his house. The existing house violates the current front yard setback requirement and his proposed addition would increase that violation.

Board members questioned Mr. Antogiovanni on the proposed changes to the front of the house. Mr. Antogiovanni agreed to comply with the comments in Mr. Schley's January 22, 2010 memo and was willing to grant the Township a conservation easement. There was discussion about the proposed removal of a tree in the front yard. Mr. Antogiovanni agreed to work with the Engineering Department and investigate moving the new driveway to avoid this tree. He agreed, as per Comment #7 in Mr. Schley's memo, to apply to this Board should the proposed demolition exceed partial destruction. Mr. Antogiovanni said that his architect had prepared the submitted plans.

Mr. Yuval Wellisch, architect, Mountainside, NJ, was sworn in. He stated that the proposed addition would not create additional load on the portion of the existing structure that is to remain. Mr. Antogiovanni said that it was not his intention to demolish the house.

Public hearing was opened for questions and comments on this application. Hearing none, the public portion of this hearing on this application was closed.

Mr. Warner listed as conditions of approval compliance with the eight comments in Mr. Schley's January 22, 2010 memo and to work with the Engineering Department to preserve a tree in the front yard.

Public hearing was re-opened to allow Mr. Antogiovanni to discuss a plan showing the location of the oak tree in the front yard.

Public hearing was opened for questions and comments on this testimony. Hearing none, the public portion of this hearing on this application was closed.

The motion was made by Mr. Plaza and seconded by Mr. Viola to deem the application complete and to direct the Board Attorney to draft a resolution approving the application with the conditions of approval as discussed above.

Roll call:

Aye: Lasko, Miller, Plaza, Schulenburg, Viola, Ross, Orr

Motion carried

Anti-Harassment Training

Board members viewed the Anti-Harassment Training video on the screen in the Court Room.

Comments by Staff

Mr. Warner said the 2009 Annual Report would be ready for the next meeting.

The Board moved to adjourn the public meeting at 9:45 p.m., there being no further business to discuss.

Respectfully submitted,

Frances Florio
Secretary to the Board

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**JAFFA BUILDING, LLC
Case No. ZB08-008A**

RESOLUTION – EXTENSION

WHEREAS, JAFFA BUILDING, LLC (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for an extension of the variance approval heretofore granted to it, pursuant to a Resolution adopted by the Board on February 4, 2009 in Case No. ZB08-008, the aforesaid approval pertaining to the construction of a new, single-family dwelling on a vacant lot identified as Block 11401, Lot 26 (formerly Block 187, Lot 33.12) on the Tax Map, more commonly known as 95 Emerald Valley Lane; and

WHEREAS, pursuant to Section 21-5.10 of the Land Development Ordinance (the “Ordinance”), variances granted by the Board shall expire by limitation unless construction or alteration shall have actually have been commenced within one (1) year from the date of the Board’s decision; and

WHEREAS, the Applicant requested, in accordance with Section 21-5.10 of the Ordinance, that the Board grant it an extension of one (1) year from the date of the expiration of the aforementioned approval; and

WHEREAS, the Board, by a vote of 7 to 0, finds that the Applicant has demonstrated to the reasonable satisfaction of the Board that the Applicant was barred or prevented, directly or indirectly, from proceeding with the project because of delays beyond the control of the Applicant, specifically delays due to the present market conditions, which have been noted by our State Legislature in the enactment of the

Permit Extension Act to be extraordinarily poor for the construction and sale of new residential dwellings. The Board noted that there were no zoning changes in the interim which would affect the project or require any further variance relief.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bernards, on this 6th day of January, 2010, that the application of Jaffa Building, LLC for an extension of the variance approval heretofore granted to it, as aforesaid, be, and the same is hereby, granted until February 4, 2011, such extension to be subject to all of the same conditions as are set forth in the Board's original Resolution of approval dated February 4, 2009 in Case No. ZB08-008.

ROLL CALL VOTE:

Those in Favor: Lasko, Marshall, Miller, Plaza, Viola, Ross, Orr

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on February 3, 2010 as copied from the Minutes of said meeting.

FRANCES FLORIO, Secretary

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

Dated: _____, 2010

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**PAUL AND PATRICIA SCHMALL
Case No. ZB08-017A**

RESOLUTION – EXTENSION

WHEREAS, PAUL AND PATRICIA SCHMALL (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the ABoard@) for an extension of the variance approval heretofore granted to them, pursuant to a Resolution adopted by the Board on November 5, 2008 in Case No. ZB08-017, the aforesaid approval pertaining to the construction of a two-story, approximately 10 foot by 24 foot (256 square foot footprint) addition to the rear of an existing single-family dwelling, on property identified as Block 2904, Lot 12 (formerly Block 115, Lot 12) on the Tax Map, more commonly known as 11 Peachtree Road; and

WHEREAS, pursuant to Section 21-5.10 of the Land Development Ordinance (the “Ordinance”), variances granted by the Board shall expire by limitation unless construction or alteration shall have actually have been commenced within one (1) year from the date of the Board’s decision; and

WHEREAS, the Applicants requested, in accordance with Section 21-5.10 of the Ordinance, that the Board grant them an extension of one (1) year from the date of the expiration of the aforementioned approval; and

WHEREAS, the Board, by a vote of 7 to 0, finds that the Applicants have demonstrated to the reasonable satisfaction of the Board that the Applicants were barred or prevented, directly or indirectly, from proceeding with the project because of delays beyond the control of the Applicants, specifically delays due to the sharp decline in the value of several investments that were intended to fund the work. The Board Attorney

advised the Board that Section 21-5.10 of the Ordinance provides that an applicant may apply for an extension of a variance approval either before or after what would otherwise be the expiration date of the approval and that, if the variance approval has expired before the date on which the extension is granted, then the extension shall begin on what would otherwise be the expiration date. The Board noted that there were no zoning changes in the interim which would affect the project or require any further variance relief.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bernards, on this 6th day of January, 2010, that the application of Paul and Patricia Schmall for an extension of the variance approval heretofore granted to them, as aforesaid, be, and the same is hereby, granted until November 5, 2010, such extension to be subject to all of the same conditions as are set forth in the Board's original Resolution of approval dated November 5, 2008 in Case No. ZB08-017.

ROLL CALL VOTE:

Those in Favor: Lasko, Marshall, Miller, Plaza, Viola, Ross, Orr

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of February 3, 2010 as copied from the Minutes of said meeting.

FRANCES FLORIO, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: _____, 2010

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**MICHAEL AND ELIZABETH MOSHIER
Case No. ZB09-020**

RESOLUTION

WHEREAS, MICHAEL AND ELIZABETH MOSHIER (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 the existing residential dwelling and pool, and the construction of a new dwelling, pool and pool shed, on property identified as Block 2602, Lot 13 on the Tax Map, more commonly known as 15 Dogwood Way:

(1) A variance for a pre-existing lot width of 224.02 feet, whereas the minimum required lot width in an R-2 (2 acre) residential zone is 250 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

(2) A variance for a pre-existing improvable lot area of 19,025.71 square feet, whereas the minimum required improvable lot area in an R-2 (2 acre) residential zone is 22,000 square feet, pursuant to Section 21-10.4(b) and Table 401-A of the Land Development Ordinance; and

WHEREAS, public hearings on notice were held on such application on January 6, 2010, 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 subject property is a 19,025.71 square foot, rectangular shaped lot fronting on Dogwood Way and presently improved with a two-story, single-family residential dwelling with an approximately 3,000 square foot footprint and an inground swimming pool.

3. The Applicants propose to remove the existing residential dwelling and pool and construct a new dwelling, pool and pool shed.

4. The proposed new dwelling would have 5 bedrooms, 4 full bathrooms and 2 half bathrooms, and approximately 7,566 square feet of living space, with an additional 639 square feet of future potential living space, for an aggregate of 8,205 square feet.

5. The Applicants' proposal is depicted on a Variance Plan prepared by Paul D. Fox, P.E., of Apgar Associates, dated September 11, 2009, same consisting of five sheets (Title Sheet, Lot Grading, Soil Erosion and Sediment Control plan, Survey, and 2 pages of Construction Details). The architectural details of the Applicants' proposal are depicted on plans prepared by John James, Architect, dated September 11, 2009, same consisting of eight sheets (A-01 = Basement construction plan; A-02 = First floor construction plan; A-03 = Second floor construction plan; A-04 = Roof plan; A-20 = Proposed front elevation; A-21 = Proposed left side elevation; A-22 = Proposed rear elevation; A-23 = Proposed right elevation).

6. The property is located in an R-2 (2 acre) residential zone. The requested variances for the pre-existing lot width and improvable lot area deviations fall within the criteria of N.J.S.A. 40:55D-70(c).

7. The Applicants submitted an On-Site Wetlands & State Open Water Presence – Absence Analysis prepared by John Peel, P.P., of PK Environmental, dated

September 11, 2009. Mr. Peel concluded therein that there are no NJDEP regulated wetlands, wetland transition areas (buffer), State open waters, or riparian zone buffers affecting the subject site.

8. By Memorandum dated October 27, 2009, the Environmental Commission noted that it had no environmental concerns at that time.

9. The Board professionals, Peter A. Messina, P.E., P.P., the Board Engineer, and David Schley, A.I.C.P./P.P., the Board Planner, were duly sworn according to law.

10. Paul D. Fox, P.E., of Apgar Associates, with a business address of P.O. Box 310, Far Hills, NJ, was duly sworn according to law, provided his qualifications and was accepted by the Board as an expert in the field of civil engineering.

11. Mr. Fox generally described the subject property as an approximately 200 foot wide and 400 foot deep lot with a sewer easement bisecting the rear-yard. He testified that the property was serviced with public water and sewer and that the Applicants would comply with the Township standards for managing stormwater runoff.

12. The Applicants stipulated, as conditions of approval, to the following:
- a. Providing stormwater infiltration measures, which measures shall be subject to the further review and approval of the Township Engineer prior to the issuance of a building permit;
 - b. Removing all existing overhead wires and placing all utility services underground;
 - c. Submitting a tree protection plan, including, but not limited to, addressing means by which the disturbance of the mature shade trees in the vicinity of the proposed front yard parking/turnaround area shall be minimized, for review and approval by the Township Engineer prior to any land disturbance;
 - d. The existing/proposed lot coverage calculations and the average grade/building height calculations shown on the plans being subject to

further review and approval by the Zoning Officer prior to the issuance of a building permit;

- e. Paying the requisite development fees in accordance with Section 21-76.16 of the Land Development Ordinance; and
- f. Making the site available to the Basking Ridge Fire Company in the event that same shall desire 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;

13. On questioning by Board Members, Mr. Fox testified that the proposed development would not disturb any trees bordering adjacent properties and that the impervious coverage would increase from approximately 12% to approximately 14%, but still remain below the maximum permitted impervious coverage ratio of 15%. He further testified regarding how the proposed development would eliminate the existing front-yard and side-yard setback deviations.

14. John James, A.I.A., with a business address of 11 Inwood Place, Maplewood, NJ, was duly sworn according to law, provided his qualifications and was accepted by the Board as an expert in the field of architecture. Mr. James described the existing dwelling as a 1950's "Cape-Cod" style home with multiple additions, which was in poor condition including cracks in the foundation, rotting in the vinyl siding, multiple roof leaks and parts of the chimney falling down. He described the neighborhood as containing a mix of types and sizes of dwellings, ranging from old one-story ranches to more modern 2 ½ story colonials. He testified that eight out of the fifteen neighboring lots were, like the subject property, nonconforming as to lot width, and eleven out of the fifteen were, like the subject property, encumbered by a sanitary sewer easement.

15. Mr. James testified regarding the proposed new dwelling, explaining that unlike the existing dwelling it would be situated in the center open area of the subject lot (*i.e.*, located approximately 25 feet to the east) so that the dwelling will conform with both required 50 foot side-yard setbacks. He testified that the new dwelling would be a 5 bedroom, 3 car garage home. Mr. James also testified that the Applicants would be replacing the existing inground swimming pool with a new one, as well as constructing an accessory pool shed.

16. Mr. James submitted three (3) photographs that he took in August of 2009 depicting neighboring homes similar in size and style to the proposed dwelling. He introduced the photographs into evidence as Exhibits A-1, A-2 and A-3, respectively. He identified Exhibit A-1, as depicting the home at Block 2602, Lot 3, directly to the rear of the subject property. He identified Exhibit A-2, as depicting the home located at Block 2602, Lot 7. Finally, he identified Exhibit A-3, as depicting the home located at Block 2603, Lot 4, situated at the corner of Culberson Road and Dogwood Way.

17. Michael Moshier, one of the Applicants, residing at 67 South Alward Avenue, Basking Ridge, NJ, was duly sworn according to law. Mr. Moshier testified that he purchased the subject property in April of 2009 and there is currently a third-party renting it with three months left on the lease. He further testified that he has not spoken about the application with neighboring property owners since he does not know any of them. However, Mr. Moshier confirmed that he complied with the public notice requirements, including notifying all owners of property within a 200 foot radius of the subject property.

18. The Applicants stipulated, as a condition of approval, to providing only low level or landscape lighting for the pool area and pool shed and ensuring that no lighting projects off site onto any neighboring property.

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

20. With respect to the positive criteria for the requested “c(1)” or “hardship” variances, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the subject property. First, the Board finds that the hardship that will be imposed upon the Applicants as the owners of the subject lot was not a “self-created hardship.” The evidence revealed that the Applicants’ lot was conforming until 1999, when the lot width requirement increased from 200 feet to 250 feet. Moreover, the lot became further nonconforming in 2006 as a result of the newly adopted minimum improvable lot area requirement. See Commons v. Westwood Zoning Board of Adjustment, 81 N.J. 597, 606 (1980) (wherein the Supreme Court addressed the question of “self-created hardship” in the context of a request for a variance to permit the construction of a home on an undersized isolated lot). Second, the Board finds that the Applicants have established that no additional land is available for purchase which would bring the lot width or improvable lot area into, or closer to, conformity with the district standards of the zoning ordinance. The evidence revealed that the Applicants’ lot abuts a total of 3 lots to the north, east and west, all of which are nonconforming relative to lot width and/or

improvable lot area. Thus, these adjoining lots contain no land which could be acquired by the Applicants in order to create a more conforming lot width and/or improvable lot area on the Applicants' lot without making one or more of the adjoining lots even more nonconforming. Third, with respect to the improvable lot area deviation, the Board recognizes that the Applicants' building envelope actually contains more than the requisite 22,000 square feet of improvable area in the aggregate, however, due to an existing sanitary sewer easement which traverses the rear yard, the building envelope contains only 19,025.71 square feet of contiguous improvable area. Fourth, the Board notes that the lot and the proposed construction conform to all other lot size, coverage and setback requirements. Fifth, the Board recognizes the benefits to be derived from the elimination of two existing setback deviations, specifically, the deficient front-yard setback of 95.07 feet (whereas a minimum of 100 feet is required) and the deficient side-yard setback of 24.95 feet (whereas a minimum of 50 feet is required).

21. The Board further finds that the proposed development will serve multiple purposes of zoning, as provided in the Municipal Land Use Law, including the provision of a desirable visual environment and the enhancement of the visual compatibility of the property with adjoining properties.

22. Finally, 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.

WHEREAS, the Board took action on this application at its meeting on January 6, 2010, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 6th day of January, 2010, that the application of Michael and Elizabeth Moshier, 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 provide soil erosion and sediment control measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance, subject to review and approval of the Township Engineer prior to the issuance of a building permit;
- (3) The Applicants shall provide stormwater infiltration measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance, subject to review and approval of the Township Engineer prior to the issuance of a building permit;
- (4) The Applicants shall remove all existing overhead wires and place all utility services underground;
- (5) The Applicants shall submit a tree protection removal and replacement plan, including, but not limited to, addressing means by which the disturbance of the mature shade trees in the front yard shall be minimized by adjusting the design and location of the proposed parking /turnaround area, for review and approval by the Township Engineer prior to any land disturbance;
- (6) The existing/proposed lot coverage calculations and the average grade/building height calculations shown on the plans shall be subject to further review and approval by the Zoning Officer prior to the issuance of a building permit;
- (7) The Applicants shall pay the requisite development fees in accordance with Section 21-76.16 of the Land Development Ordinance;

- (8) The Applicants shall make the site available to the Basking Ridge Fire Company in the event that same shall desire 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;
- (9) The Applicants shall provide only low level or landscape lighting for the pool area and pool shed and ensure that no lighting projects off site onto any neighboring property;
- (10) 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;
- (11) 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
- (12) 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: Lasko, Marshall, Miller, Plaza, Viola, Ross, Orr

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on February 3, 2010 as copied from the Minutes of said meeting.

FRANCES FLORIO, Secretary

ZONING BOARD OF ADJUSTMENT

OF THE TOWNSHIP OF BERNARDS, COUNTY

OF SOMERSET,
STATE OF NEW JERSEY

Dated: _____, 2010

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**JOHN AND KRISTEN GANNON
Case No. ZB09-021**

RESOLUTION

WHEREAS, JOHN AND KRISTEN GANNON (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 construction of a two-story, 1,237 square foot addition to the north side and rear of the existing dwelling on property identified as Block 2906, Lot 27 on the Tax Map, more commonly known as 4 Woodstone Road:

1. A variance for a proposed front-yard setback of approximately 43.3 feet from Woodstone Road, whereas the existing front-yard setback is 43.3 feet, and whereas the minimum required front-yard setback in an R-6 (3/4 acre) residential zone is 50 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and
2. A variance for a rear-yard setback of approximately 44.25 feet, whereas the existing rear-yard setback is 48.8 feet, and the minimum required rear-yard setback in an R-6 (3/4 acre) residential zone is 50 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on January 6, 2010, 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 subject property is an approximately 20,316 square foot (0.47 acre) undersized, corner lot located at the intersection of Cross Road and Woodstone Road.

3. The subject property is presently improved with a 1½ story frame dwelling (single-family residence), with a one-story frame shed located in the northwest corner of the property. The Applicants propose to construct a two-story, 1,237 square foot addition to the north side and rear of the existing dwelling. The first floor (775 square feet) includes a new family room, new bathroom, expanded bedroom and expanded mudroom. The second floor (462 square feet) includes new/expanded bedrooms and bathrooms. The proposal also includes a new 16 foot by 33 foot (approximately 486 square foot) rear deck and an approximately 15 square foot expansion of an existing unroofed front stoop.

4. The Applicants' proposal is depicted on architectural drawings prepared by Joseph M. Marchese, Architect, dated September 16, 2009, same consisting of four sheets (V-1 = Foundation, site, building data, zoning data, and existing photos; V-2 = First floor; V-3 = Second floor; and V-4 = Elevations).

5. The property has pre-existing nonconformities. The area of the lot is 20,316 square feet, rather than the minimum required 32,670 square feet. The lot width along Cross Road of approximately 133 feet is deficient since a minimum of 187.5 feet is required. The property also has a deficient rear-yard setback of 5.8 feet for an accessory structure (a shed), whereas a minimum of 10 feet is required. None of the aforementioned nonconformities will change or be affected by the proposed development.

6. The property is located in an R-6 (3/4 acre) residential zone. The requested variances for the front-yard and rear-yard setbacks fall within the criteria of N.J.S.A. 40:55D-70(c).

7. By Memorandum dated October 27, 2009, the Environmental Commission noted that it had no environmental concerns at that time.

8. The Board professionals, Peter A. Messina, P.E., P.P., the Board Engineer, and David Schley, A.I.C.P./P.P., the Board Planner, were duly sworn according to law.

9. John Gannon, one of the Applicants, residing at 4 Woodstone Road, Basking Ridge, was duly sworn according to law. Mr. Gannon testified that he and his wife own the subject property, which is presently improved with a “Cape-Cod” style residential dwelling with approximately 1,475 square feet of living space, and that the home is possibly the smallest house in what is known as “Homestead Village”. He testified that the reason for the expansion is that the Applicants have two young children and they also anticipate Mrs. Gannon’s mother moving in with the family for health reasons. Mr. Gannon further testified that he spoke with his neighbors and that they all were in support of the application.

10. Mr. Gannon testified that he took the majority of the photographs submitted with the application materials and that his architect, Mr. Marchese, took the balance of the photographs, and that all of the photographs were taken in September 2009 when the application materials were submitted. Mr. Gannon confirmed that the lot coverage would increase post development but that it would still be below the 18% maximum permitted.

11. Mr. Gannon stipulated, as a condition of approval, to relocating the shed in the rear yard so as to eliminate the existing accessory rear-yard setback deviation. He also stipulated, as a condition of approval, to ensuring the uniformity of style and materials of the entirety of the exterior of the dwelling post-addition.

12. Joseph M. Marchese, A.I.A., with a business address of P.O. Box 184, Kenil, NJ was duly sworn according to law, provided his qualifications and was accepted by the Board as an expert in the field of architecture. Mr. Marchese testified that he took certain of the photographs submitted with the application materials. He also clarified Mr. Gannon's stipulation regarding the exterior of the dwelling by explaining that it was the Applicants' intention to re-side the entirety of the dwelling inclusive of the new rear addition in either a hardyplank or cedar wood, but that they did not want to be restricted as to which material they could utilize.

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

14. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief under both N.J.S.A. 40:55d-70(c)(1) and N.J.S.A. 40:55d-70(c)(2).

15. As to the positive criteria under the "(c)(1)" or "hardship" analysis, 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 subject property. Specifically, the Applicants' lot has a somewhat restrictive building envelope as a result of it being both undersized and a corner lot, which requires two frontyards. The greatest

impact to the proposed addition is the lot's depth, in other words, the front-to-rear dimension, which is possibly the smallest of all lots in this R-6 zone neighborhood. The evidence revealed that these hardships were not created by the Applicants or any predecessors-in-title.

16. With respect to the positive criteria for a "c(2)" or "flexible c" variance, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The proposed development will provide a desirable visual environment, enhance the visual compatibility of the property with adjoining properties and otherwise promote the general welfare.

17. The Board finds that the resultant zoning deviations are modest relative to the benefits to be derived from the proposed development. First, while a variance is required to extend the preexisting nonconforming front-yard setback from Woodstone Road because the existing front stoop is proposed to be widened from approximately 5 feet to 9 feet, the proposed development will not actually reduce the front-yard setback. Second, the proposed rear deck is permitted to encroach into the 50 foot rear-yard setback area without a variance, provided that it remains an open deck, as shown on the plans. The Applicants have stipulated, as a condition of approval, that they will not enclose all or any part of the proposed rear deck or the expanded front stoop. Third, the Board recognizes the benefits to be derived by the Applicants' stipulation to relocate the nonconforming shed so as to eliminate the existing accessory rear-yard setback deviation.

Fourth, the Board recognizes the further benefit of the Applicants maintaining a uniform exterior condition of the existing dwelling.

18. Finally, the Board finds that the Applicants have satisfied the negative criteria. 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.

WHEREAS, the Board took action on this application at its meeting on January 6, 2010, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 6th day of January, 2010, that the application of John and Kristen Gannon 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 aforementioned approval is conditioned upon the proposed rear deck and the enlarged front stoop both remaining open as shown on the plans or, in the alternative, should the Applicants desire to enclose any part or all of one or both, the Applicants are required to first obtain Board approval;
- (3) The Applicants shall relocate the nonconforming shed so as to eliminate the existing accessory rear-yard setback deviation;
- (4) The Applicants shall ensure that the post-construction exterior condition of the dwelling is uniform;
- (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 shall be subject to all State, County and Township statutes, ordinances, rules, regulations affecting development in the Township, County and State; and
- (7) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances granted herein shall expire unless such construction or alteration permitted by the variances has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Lasko, Marshall, Miller, Plaza, Viola, Ross, Orr

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of Bernards at its meeting on February 3, 2010 as copied from the Minutes of said meeting.

FRANCES FLORIO, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: _____, 2010