

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

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

**ROLL CALL:**

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

Members absent: Lasko

Members late: Rhatican (7:32 p.m.)

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 CHARGES AGAINST ESCROW ACCOUNTS**

The motion was made by Mr. Miller and seconded by Mr. Schulenburg to approve escrow charges from David Schley for February 2010, and Steven Warner, Esq. for January 2010.

**APPROVAL OF RESOLUTIONS**

**RESOLUTION – Dougher, Brendan – Block 6301, Lot 34.04 – Bulk Variance**

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

Roll call:

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

Motion carried

**RESOLUTION – Antogiovanni, Paul – Block 2903, Lot 10 – Bulk Variance**

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

Roll call:

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

Motion carried

**HEARING – ARBORKELP, LLC – Block 801, Lot 5 (formerly Block 6, Lot 3) – 370 North Maple Avenue – Extension of Preliminary and Final Site Plan and Variance Approvals to January 9, 2011**

Vincent Bisogno, Esq. represented the applicant. He said the applicant had been granted Preliminary and Final Site Plan approval for an office and garage/storage building for a tree and lawn maintenance business on January 9, 2008. The applicant is applying for an extension of these approvals for one year, to January 9, 2011. Mr. Bisogno said that the applicant planned to sell the property.

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

The motion was made by Mr. Plaza and seconded by Mr. Schulenburg to direct the Board Attorney to draft a resolution granting an extension of site plan approval for Arorkelp, LLC to January 9, 2011.

Roll call:

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

Motion carried

**CONTINUED PUBLIC HEARING – Gallo, Michael and Nancy – Block 5203, Lot 14 – 383 Grist Mill Drive – Bulk Variance**

Michael Gallo, 383 Grist Mill Drive, previously sworn in, said that in response to the Board's request, he had spoken with his neighbors about the tree house located on the property line. He spoke with Mr. Arrigan at 460 Mt. Airy Road; Mr. Arrigan has no problem with the tree house being partly on his property. Mr. Gallo also spoke with Mrs. Bruno, at 452 Mt. Airy Road and she had no objections. Mr. Gallo submitted Exhibit A-1, six photographs showing the dimensions of the tree house.

Mr. Gallo discussed the existing shed. He said that it would be hard to relocate it due to the topography of the lot but he would move it if the Board required. He said he would file a permit application for the shed.

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

Board members discussed the new testimony and were in agreement that no action was needed regarding the tree house. There was consensus that variance relief could be granted for the existing deck and shed.

The motion was made by Mr. Schulenburg and seconded by Mr. Viola to deem the application complete and to direct the Board Attorney to draft a resolution approving the application subject to the deck remaining an open deck.

Roll call:

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

Motion carried

**COMPLETENESS & PUBLIC HEARING – DEMIRIS, ELEFTHERIOS and MARY – Block 5203, Lot 24 – 32 Oak Hill Drive – Bulk Variance**

Mr. Miller recused himself from this application.

Mary and Eleftherios Demiris, 32 Oak Hill Drive, and Mr. Schley were sworn in. Mary Demiris explained that they are selling their house and the new owners want to construct a pool. Mr. Demiris will construct the pool. A variance is needed because the pool cannot be located behind the rear building line of the adjacent houses on Oak Hill Drive (Lots 25 and 29). She said the owners of those lots have no problem with the proposed location of the pool. She noted that the driveway would be reconfigured to reduce lot coverage.

Mr. Messina joined the meeting.

Mrs. Demiris submitted Exhibits A-1 through A-3, photographs of the rear yard. She said, as noted in the February 16, 2010 memo from the Environmental Commission that a 24-inch oak tree would be removed.

Public hearing was opened for questions. The following residents spoke.

- Ken Strahs, 39 Bullion Road – asked about the noise generated from pool equipment, drainage issues, and the possibility that blasting will be required to install the pool.
- Sarah Booth, 33 Bullion Road – asked about the proposed buffering near her property line.
- Robert Pierson, 347 Grist Mill Drive – asked about the proposed buffering near his property line.

Hearing no further questions, the public portion of this hearing on this testimony was closed.

Public hearing was opened for comments on the application.

- Robert Telesmanic, 39 Valley View Drive, and Mr. Messina were sworn in. Mr. Telesmanic said he was the contract purchaser and they wanted a pool. He said that Mr. Demiris would construct the pool and he agreed to relocate the pool equipment to reduce the impact of noise on neighbors.

Mr. Messina recommended that a three-sided fence and shrubs be used to buffer the pool equipment. He also noted that any screening of the lots on Bullion Road must be outside the sanitary sewer easement. Mary Demiris agreed to follow these recommendations.

Public hearing was re-opened for questions on this testimony.

- Martin Urbas, 343 Grist Mill Drive – asked what type of screening would be installed. Mr. and Mrs. Demiris agreed to work with the Township Engineer to reduce runoff when grading the lot.

- Sarah Booth, 33 Bullion Road – asked what species of trees would be used. The applicant said they would plant evergreens.

Hearing no further questions, the public portion of this meeting on this testimony was closed.

Public hearing was re-opened for comments on the application.

- Robert Pierson, 347 Grist Mill Drive – was sworn in. He noted that his rear yard adjoins the Demiris property. He asked if the pool design could change after the Board made their decision.
- Martin Urbas, 343 Grist Mill Drive – was sworn in. He said that the Demiris lot sloped down in the rear yard and was wet. He noted his concern that the proposed pool construction would exacerbate this situation. He noted his concern about privacy.
- Ken Strahs, 39 Bullion Road – was sworn in. He said he had three issues with the application: noise, visual impact, and impact on drainage.
- Sarah Booth, 33 Bullion Road – was sworn in. She noted her concerns about blasting and said that she thought this pool construction would create additional runoff problems. She asked that the applicants replace existing dead trees.

Hearing no further comments, the public portion of this hearing on this application was closed.

Board members discussed how this application would eliminate a pre-existing lot coverage issue. Mr. Warner listed as conditions of approval the pool location to be substantially as shown on the plans, a three-sided fence to screen pool equipment, screening to reduce visual impact, and the use of best management practices for pool discharge.

The motion was made by Mr. Schulenburg and seconded by Mr. Ross to deem the application complete and to direct the Board Attorney to draft a resolution approving the application subject to the conditions discussed above and Mr. Schley's comments in his February 24, 2010 memo.

Roll call:

Aye: Plaza, Schulenburg, Viola, Ross, Rhatican, Orr  
Motion carried

Mr. Miller re-joined the meeting

**COMPLETENESS REVIEW & PUBLIC HEARING – CONTI, JEFFREY and DONNA – Block 8802, Lot 21 – 3 Saint Nickolas Way – Bulk Variances**

Vincent Bisogno, Esq. represented the applicants. He explained that the Contis want a pool but cannot meet the requirement that it be behind the rear building line of adjacent houses. Their application also asked for a variance for lot coverage.

Donna Conti, 3 St. Nickolas Way, Mr. Schley, and Mr. Messina were sworn in. Mrs. Conti said this was a corner lot and due to the location of the house, there was no conforming location for a pool. She submitted as Exhibit A-1, A-2, and A-3, supplemental photographs

showing the rear yard. She presented Exhibit A-4, a colored rendering of the plot plan. Mrs. Conti said the proposed shed was for the storage of pool equipment. She stated that she did not want to reduce the size of their driveway.

Board members asked about the existing and proposed buffer plantings and the distance of the pool to the house on Lot 22. Mrs. Conti said it was located 60 feet away.

Public hearing was opened for questions of this witness.

- Jim Lofredo, 15 St. Nickolas Way – asked if the proposed pool met lot coverage and rear yard requirements for pools. He asked about required setbacks for pool and for pool equipment.
- Cathleen Finnergan, 15 St. Nickolas Way – asked about ordinance requirements for pool.

Hearing no further questions, the public portion of this hearing on this witness was closed.

Raymond Milsek, Nature's Apprentice, Annandale, NJ was sworn in. He said they would add shrubs to the existing buffer on the west but they did not propose to install a fence or additional trees. He said the applicants would install a solid cedar fence on the northern property line and shrubs around the pool to buffer it from St. Nickolas Way.

Board members asked about what the neighbors at 15 St. Nickolas Way would see. They noted that fencing was proposed on the north side but not on the west side.

Public hearing was opened for questions of this witness.

- Jim Lofredo, 15 St. Nickolas Way – asked about the proposed landscape plans.

Hearing no further questions, the public portion of this hearing on this witness was closed.

Public hearing was opened for comments on the application.

- Jim Lofredo and Cathleen Finnergan, 15 St. Nickolas Way were sworn in. They noted their opposition to this application based on visual and noise issues. They submitted fourteen photographs, identified as Exhibit O-1, showing their view of the Contis' yard from their house. They said they would see the pool and would be affected by noise. They stated that the existing buffer was inadequate.

Hearing no further questions, the public portion of this hearing on this application was closed.

Board members discussed how the buffer would be improved, the issue of the lot coverage variance, the proximity of the proposed pool to the western property line, potential for noise issues, and the impact of the pool on the neighbors.

The motion was made by Mr. Plaza and seconded by Mr. Ross to direct the Board Attorney to draft a resolution denying this application.

Roll call:

Aye: Miller, Plaza, Schulenburg, Viola, Ross, Orr  
Nay: Rhatican  
Motion carried

**COMPLETENESS REVIEW & PUBLIC HEARING – HODGES, STEPHEN and CLAUDIA – Block 3201, Lot 6 – 177 Lord Stirling Road – Bulk Variances**

Stephen Hodges, 177 Lord Stirling Road and Mr. Messina and Mr. Schley were sworn in. Mr. Hodges stated that he and his wife wish to expand their house with an addition to the rear and a attached garage on the west side. He noted that his lot is undersized and the house was built in 1958. Mr. Schley explained that the building envelope was made nonconforming in 1999. He also noted that if the Hodges built a detached garage, no variance would be needed. Mr. Messina noted that the lot to the west was only 50-feet wide and would always be vacant.

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

Mr. Hodges agreed to grant the Township a conservation easement for the wetlands in the rear of his property.

The motion was made by Mr. Rhatican and seconded by Mr. Ross to deem the application complete and to direct the Board Attorney to draft a resolution approving the application including requiring a conservation easement (as per Mr. Schley's February 24, 2010 memo.)  
Roll call:

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

**2009 ANNUAL REPORT AND RECOMMENDATIONS**

Board members discussed minor changes to the report and asked if any of the previous year's recommendations were being considered by the Township Committee.

The motion was made by Mr. Plaza and seconded by Mr. Ross to approve the 2009 Annual Report & Recommendations as drafted.

Roll call:

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

**Comments from Staff**

Mr. Warner said that the special meeting of March 11, 2010 was cancelled and that the application by Liberty Corner Presbyterian Church would be heard at a later date.

The Board moved to adjourn the public meeting at 11:10 p.m., there being no further business to discuss.

Respectfully submitted,

Frances Florio  
Secretary to the Board

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**BRENDAN DOUGHER  
Case No. ZB09-024**

**RESOLUTION**

WHEREAS, BRENDAN DOUGHER (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following variance in connection with the construction of an approximately 687 square foot inground swimming pool and related patio and spa, located to the rear of the existing dwelling on property identified as Block 6301, Lot 34.04 on the Tax Map, more commonly known as 22 Belmont Court:

A variance for locating an inground swimming pool 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 February 3, 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 Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions;

1. The Board reviewed the application and deemed it to be complete.
2. The property is an approximately 58,722 square foot (1.35 acre) lot located on the bulb of a cul-de-sac on Belmont Court. The tract has a deficient lot width of 171.95 feet versus 200 feet required and a deficient front-yard setback of 62.1 feet, whereas 75 feet is required, however, variances for same were approved by the Planning Board when the lot was created via subdivision in 2007. The lot is presently improved with a two-story frame dwelling, with an

approximately 3,542 square foot footprint, and associated driveways and walkways and no existing outbuildings.

3. The Applicant proposes to install an approximately 687 square foot inground swimming pool with related patio and spa, located to the rear of the existing dwelling, as well as two wood decks proposed at the rear of the dwelling.

4. The Applicant's proposal is depicted on a Variance/Pool Plan prepared by Murphy & Hollows Associates, Inc., dated August 18, 2009 and last revised October 7, 2009, consisting of one (1) sheet.

5. The lot is located in the R-4 (1 acre) residential zone. The pool location variance falls within the criteria of N.J.S.A. 40:55D-70(c).

6. By Memorandum dated November 16, 2009, the Environmental Commission memorialized its desire that Township residents use the best management practices available when discharging pool water and provided the relevant website for detailed information regarding same.

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

8. William G. Hollows, P.E., L.S., P.P., of Murphy & Hollows Associates, Inc., 331 Elm Street, Stirling, New Jersey, was duly sworn according to law and was accepted by the Board as an expert in the field of civil engineering having been so accepted by the Board on previous occasions.

9. Mr. Hollows testified generally regarding the property and the proposed development, referencing the Variance/Pool Plan that he prepared and submitted with the

application materials. He then introduced into evidence as Exhibit A-1, a colorized version of the Variance/Pool Plan. He verified thereon the location of the existing two-story frame dwelling and the proposed location for the pool, deck, spa and related patio. Mr. Hollows then utilized the “SmartBoard” and drew a line thereon extending from the rear of the existing dwelling on adjacent Lot 34.03 through the subject lot, to illustrate that if the Applicant were to locate the pool behind the rear building line of the existing dwelling on adjacent Lot 34.03 so as to comply with the pool location ordinance, the pool would be located near the rear yard property line, which would not only render the pool location extremely impractical for use by the Applicant and his family, but also would make the pool more visible from both the street and the neighbor on adjacent Lot 34.03, defeating the purpose of the pool location ordinance itself. After the Applicant’s counsel represented that, on October 25, 2009 (the date that appears thereon), he took the photographs submitted with the application materials, Mr. Hollows testified that he reviewed the photographs and visited the site and, based upon his personal knowledge, the photographs accurately depicted the existing conditions at, and views from, the property.

10. Brendan Dougher, the Applicant, residing at 22 Belmont Court, was duly sworn according to law. Mr. Dougher confirmed that the photographs submitted with the application materials accurately depicted the existing conditions at, and views from, the subject property. He further testified that he had discussed his proposal with neighboring property owners and none of them had any objections. Mr. Dougher testified that 4 of the 6 evergreen trees proposed as buffering on the Variance/Pool Plan already had been planted, and that each is approximately 6 feet or more in height. He testified that the area in which the pool and related facilities are

proposed to be located currently is a lawn area and, thus, appropriate for facilitating an inground pool and related facilities.

11. The Applicant stipulated, as a condition of approval, to installing the 2 remaining proposed evergreen trees at a minimum of 6 feet in height at the time of planting and, further, to locating (and if necessary relocating) all buffer/replacement trees subject to the discretion of the Township Engineer and/or Board Planner. The Applicant also stipulated, as a condition of approval, to providing a soil erosion & sediment control plan in accordance with Section 21-42.1.f.2 of the Land Development Ordinance, compliance with such requirement to be subject to review and approval by the Township Engineer prior to the issuance of a building permit. The Applicant also stipulated, as a condition of approval, to locating all proposed fencing outside of the existing conservation easement and either relocating the fencing currently existing within the conservation easement outside of the conservation easement or, in the alternative, obtaining approval from the Planning Board to retain the existing fencing within the conservation easement, prior to the issuance of the pool permit. Finally, the Applicant stipulated, as a condition of approval to complying with the “best management practices” available when discharging pool water, pursuant to the request by the Environmental Commission in its November 16, 2009 Memorandum and the NJDEP websites referenced therein.

12. No member of the public objected to, or commented on, the proposal.

13. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied his burden of proving an entitlement to the requested variance relief under N.J.S.A. 40:55D-70(c)(1). The Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the subject use of property, the strict

application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicant. Therefore, the Board determines that the requested variance from such strict application of the regulations is warranted so as to relieve the Applicant from such difficulties or hardships.

14. The Board finds that the exceptionally unique physical features affecting the property include the layout of the existing lots/dwellings. The pool is not located to the rear of the dwelling on adjoining Lot 34.03 to the east because the subject lot fronts on the bulb of a cul-de-sac. The Board concludes that it would not be practical or desirable from a zoning perspective for the Applicant to comply with the pool location requirement, because compliance would require the pool to be located in a wooded area far from the dwelling and near to the rear yard property line. The Board is of the opinion that not only would such location be impractical for the Applicant and his family, but it also would result in the pool being more, rather than less, visible from the street and the adjacent dwelling on Lot 34.03, thus defeating the purpose underlying the pool location ordinance itself. The Board recognizes that, as proposed, the view of the pool area from the adjacent dwelling would be largely obscured by the Applicant's dwelling and by the evergreen trees already installed and those still to be planted by the Applicant.

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

WHEREAS, the Board took action on this application at its meeting on February 3, 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 3rd day of February, 2010, that the application of Brendan Dougher for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall submit soil erosion and sediment control measures in accordance with Section 21-42.1(f)(2) of the Land Development Ordinance, which measures shall be subject to the review and approval of the Township Engineer prior to the issuance of a building permit;
- (3) The Applicant shall install the 2 remaining proposed evergreen trees at a minimum of 6 feet in height at the time of planting and locate, and if necessary relocate, all buffer/replacement trees subject to the discretion of the Township Engineer and/or Board Planner;
- (4) The Applicant shall locate all proposed fencing outside of the existing conservation easement and shall either relocate the fencing currently existing within the conservation easement outside of the conservation easement or, in the alternative, obtain approval from the Planning Board to retain the existing fencing within the conservation easement, prior to the issuance of the pool permit;
- (5) The Applicant shall comply with the "best management practices" available when discharging pool water, pursuant to the request by the Environmental Commission in its November 16, 2009 Memorandum and the NJDEP website referenced therein;
- (6) 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;

- (7) The Applicant shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
- (8) 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: Lasko, Miller, Plaza, Schulenburg, 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 March 3, 2010 as copied from the Minutes of said meeting.

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

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Dated: \_\_\_\_\_, 2010

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**PAUL ANTOGIOVANNI  
Case No. ZB09-023**

**RESOLUTION**

WHEREAS, PAUL ANTOGIOVANNI (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following bulk variance in connection with the expansion/renovation of the existing dwelling on property identified as Block 2903, Lot 10 on the Official Tax Map, more commonly known as 39 Woodstone Road:

A variance for a proposed front-yard setback of 44.3 feet, whereas the existing front-yard setback is 49.3 feet, and whereas the minimum required front-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on February 3, 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 Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions;

1. The Board has reviewed the application and deemed it to be complete.
2. The subject property is an approximately 3.42 acre lot fronting on Woodstone Road near the intersection with Grove Road. The lot is very long (depth of approximately 870 feet) and narrow, with a pre-existing nonconforming lot width of 175 feet, whereas the required minimum lot width in an R-4 zone is 200 feet. The very rear

of the lot is traversed by a stream and there are deciduous wetlands located approximately one-third of the depth of the lot, requiring a 50 foot transition area buffer.

3. The subject property is presently improved with a two and one-half (2 1/2) story dwelling with an attached two-car garage, brick patio, three detached sheds in the rear yard area and associated driveway and walkways.

4. The Applicant proposes to expand and renovate the existing dwelling, including additions that will increase the total 2-story floor area from 1,648 square feet to 3,817 square feet, and increase the garage from 2 cars to 3 cars. The Applicant's proposal maintains the pre-existing 49.3 foot front-yard setback, with the exception of a 5 foot by 14 foot (70 square foot) portico proposed at the front door, which reduces the front-yard setback for the length of the portico to 44.3 feet.

5. The Applicant's proposal is depicted on a Variance and Lot Grading Plan, prepared by Ensureplan, Inc., Professional Engineers & Land Surveyors, dated September 15, 2009 and last revised October 20, 2009, same consisting of two sheets. The Applicant also submitted architectural plans prepared Wellisch Architects, LLC, dated October 15, 2009, same consisting of six (6) sheets (A1 = front and left elevations, A2 = rear and right elevation, A3 = foundation/basement floor plan, A4 = first floor plan, A5 = second floor plan, and A6 = existing floor plan).

6. The property is in an R-4 (1 acre) residential zone. The requested variance for the front-yard setback falls within the criteria of N.J.S.A. 40:55D-70(c).

7. By Memorandum dated January 19, 2010, the Environmental Commission noted the existence of several large mature trees on this property and recommended that, to ensure proper protection during the proposed construction, the appropriate fencing be

placed around the tree drip line. In addition, the Commission requested that the plan note the size of the trees being removed.

8. The Applicant submitted a letter dated November 26, 2009, from William Scott, P.E., of Ensureplan, Inc., explaining the wetland delineation and letter of interpretation (“LOI”) process and concluding that “if an LOI application were to be pursued, we would represent the location of the boundary as plotted on the above-referenced plan along with a classification of intermediate wetlands value with the corresponding 50 foot transition area.”

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

10. Paul Antogiovanni, the Applicant, residing at 39 Woodstone Road, was duly sworn according to law. Mr. Antogiovanni testified generally regarding the existing dwelling and the proposed expansion/renovation. He testified that there already exists a small stoop where the front portico is proposed to be located and that if you were to count the existing stoop in calculating the front-yard setback the existing front-yard setback already would be approximately 45.3 feet, or just one foot more than that proposed by the Applicant. In response to the Board Chairman’s questions, Mr. Antogiovanni testified that they were not moving the existing dwelling’s footprint as part of the expansion/renovation, such that they cannot locate the dwelling further back so as to bring the front-yard setback into, or closer to, conformity.

11. On questioning by Board Members, Mr. Antogiovanni testified in detail regarding the existing location of 2 mature trees in the rear yard area and 3 mature trees in the front-yard area along Woodstone Road. He testified that they will preserve the 2

trees in the rear yard area, but intended to remove 2 of the 3 front yard trees in light of the height and proximity (approximately 10 feet and 20 feet, respectively) to the dwelling. With respect to the fifth tree, the approximately 27 inch oak tree near Woodstone Road towards the westerly property line and near the proposed driveway, the Applicant stipulated, as a condition of approval, that he would not remove this tree without the prior approval of the Township Engineer and, further, that he would work with the Township Engineer as part of the tree replacement plan in an effort to maintain such tree by possibly relocating the proposed driveway.

12. Mr. Antogiovanni further testified that he spoke with approximately one-half of his neighbors within 200 feet of the perimeter of the subject property and that all of them told him that they were supportive of his proposal.

13. With respect to comment numbers 7 and 8 on the Board Planner's January 22, 2010 Memorandum regarding the structural integrity of the existing dwelling and whether the demolition of a portion of the dwelling would exceed "partial destruction" as defined in Section 21-11.2.b of the Land Development Ordinance, Mr. Antogiovanni testified as follows. He testified that the dwelling was constructed in 1942, has a full basement and is concrete block construction. He further testified that, while he has only resided there for approximately 8 months, there has been no water seepage and, together with the builder, he removed part of the paneling in the basement and there appears to be no evidence of any water seepage. Further, Mr. Antogiovanni testified that he discussed the issue of structural integrity with his architect, however, he has not consulted any engineering professional. The Applicant stipulated, as a condition of approval, to providing a certification by a qualified licensed engineer as to the structural integrity of

the existing dwelling and such certification shall be subject to review and approval by the Township Engineer prior to the issuance of a building permit.

14. Moreover, Mr. Antogiovanni testified that he and the Board Planner met with the Construction Code Official and that they preliminarily concluded that the proposed improvements to the portion of the existing dwelling that is to remain would constitute an “alteration”, and not a reconstruction, such that a new Certificate of Occupancy should not be required before the work area can be reoccupied. This constitutes one of the factors militating towards a determination that the proposed demolition would not exceed “partial destruction”, as set forth in Section 21-11.2.b of the Land Development Ordinance, such that it would appear that the Applicant would not require a variance for the pre-existing lot width and the project would not be subject to a development fee in accordance with Section 21-76.16 of the Land Development Ordinance. As a final determination could not be made at the time of the hearing, the Applicant stipulated, as a condition of approval, that if it is later determined that the remaining existing construction must be replaced in order to safely accommodate the new construction, he would return to the Board to request further variance approval for the pre-existing lot width deviation.

15. Yuval Wellisch, A.I.A., of Wellisch Architects, LLC, with a business address of 1020 Springfield Avenue, Mountainside, 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. He testified as to the structural integrity of the existing dwelling. Mr. Wellisch testified that the house had stood for more than 50 years, it has a basement, a first and a second floor and that the proposed expansion/renovation would

not result in their being any additional load so as to impact the structural integrity of the existing dwelling. He further testified that the Applicant will preserve approximately 56% of the original structure.

16. Mr. Antogiovanni testified that he took the photographs that were submitted with the application materials in September and October of 2009, and that they accurately depict the existing conditions at, and views from, the subject property.

17. The Applicant further stipulated, as conditions of approval, to the following:

a. The Applicant shall maintain the front porch/portico as an open porch, that is covered with a roof but open on the sides except for columns, as proposed;

b. The Applicant shall provide to the Township a conservation easement as required to encompass the wetlands, wetlands transition area, and stream buffer area at the rear of the property. The easement shall be prepared by the Township Attorney, executed by the Applicant and recorded with the Somerset County Clerk prior to the issuance of a building permit. The easement boundary shall be delineated with Township standard markers, which markers must be installed, or bonded for, prior to the issuance of a building permit;

c. The Applicant shall submit soil erosion & sediment control measures and stormwater infiltration measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance, subject to further review and approval by the Township Engineer prior to the issuance of a building permit.

d. The Applicant shall relocate all existing overhead utility services underground;

e. The Applicant shall submit a tree replacement plan, subject to review and approval by the Township Engineer, prior to the issuance of a building permit, with replacement trees to include street trees along Woodstone Road and an evergreen buffer between the driveway/garage area and the existing residence to the north of the subject lot; and

f. The Applicant shall remove the 3 pre-existing nonconforming sheds located in the rear yard of the property, as reflected on the Variance/Lot Grading plans.

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

19. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied his 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).

20. First, under the “(c)(1)” or “hardship” criteria, the Board finds that the Applicant has 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, him as the owner of the subject property. The subject lot, while extremely long, is nevertheless very narrow, and the length of the lot is substantially compromised by the existence of deciduous wetlands in the rear yard, requiring a 50 foot transition area buffer, thus, significantly reducing the depth of the lot for building purposes. Moreover, the Board recognizes that the front-yard deviation is the result of the existing dwelling, which pre-existed the current zoning ordinance. Also, the Board notes that the additional front-yard setback deviation would be as a result of the 5 foot by 14 foot (70 square foot) portico proposed at the front door, which reduces the front-yard to 44.3 feet, thus by just 5 feet for just a 14 linear foot stretch.

21. Second, with respect to the positive criteria for a “c(2)” or “flexible c” variance, the Board finds that the Applicant has satisfied his burden of demonstrating that the purposes of the Municipal Land Use Law (“MLUL”) will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. 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. Additionally, the Board recognizes the benefits to be derived by virtue of the Applicant removing the 3 pre-existing, nonconforming accessory structures (sheds), which do not meet the minimum required distance between structures of 10 feet. By contrast to these substantial benefits, the Board finds that the detriments associated with the proposed development will be minimal, as set forth above.

22. The Board further finds that the Applicant has not, at least as of yet, demonstrated that the demolition does not exceed “partial destruction” as set forth in Section 21-11.2.b of the Land Development Ordinance. Towards this end, the Board finds that the stipulated conditions of approval requiring the engineer’s certification of structural integrity and the Applicant’s continued submission to the jurisdiction of the Board for a lot width variance if it is determined that the proposal exceeds “partial destruction” as defined in the Land Development Ordinance, are sufficient for the Board to grant the requested variance relief at this time.

23. Third, and finally, the Board finds that the Applicant has satisfied the negative criteria, that is he has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The evidence revealed that the Applicant’s lot is one of four lots, each over 2 acres, located in the R-4 (1 acre) residential zone, amidst a neighborhood of smaller lots located in the R-6 (3/4 acre) residential zone. The minimum required front-yard in the R-6 zone is 50 feet and the prevailing front-yard of the existing dwellings along Woodstone Road, in both zones, is

approximately 50 feet. The Applicant's proposal maintains the pre-existing 49.3 foot front-yard setback, with the exception of a 5 foot by 14 foot (70 square foot) portico proposed at the front door, which reduces the front-yard setback by 5 feet, to 44.3 feet, for the length of the portico.

WHEREAS, the Board took action on this application at its meeting on February 3, 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 3<sup>rd</sup> day of February, 2010, that the application of Paul Antogiovanni, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall maintain the front porch/portico as an open porch, that is covered with a roof but open on the sides except for columns, as proposed;
- (3) The Applicant shall provide to the Township a conservation easement as required to encompass the wetlands, wetlands transition area, and stream buffer area at the rear of the property. The easement shall be prepared by the Township Attorney, executed by the Applicant and recorded with the Somerset County Clerk prior to the issuance of a building permit. The easement boundary shall be delineated with Township standard markers, which markers must be installed, or bonded for, prior to the issuance of a building permit;
- (4) The Applicant shall submit soil erosion & sediment control measures and stormwater infiltration measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance, subject to further review and approval by the Township Engineer prior to the issuance of a building permit;
- (5) The Applicant shall relocate all existing overhead utility services underground;

- (6) The Applicant shall submit a tree replacement plan, subject to review and approval by the Township Engineer, prior to the issuance of a building permit, with replacement trees to include street trees along Woodstone Road and an evergreen buffer between the driveway/garage area and the existing residence to the north of the subject lot, and the Applicant shall not remove the 27" oak tree located in the front-yard area near Woodstone Road toward the westerly property line and near the proposed driveway without the prior approval of the Township Engineer, but rather shall work with the Township Engineer in an effort to maintain the aforementioned tree by possibly relocating the driveway;
- (7) The Applicant shall remove the 3 pre-existing nonconforming sheds located in the rear yard of the property, as reflected on the Variance/Lot Grading Plans;
- (8) The Applicant shall provide a certification from a qualified licensed engineer as to the structural integrity of the existing dwelling to support the new construction as depicted on the plans and such certification shall be subject to review and approval by the Township Engineer prior to the issuance of a building permit;
- (9) The Applicant shall, if it is later determined that the remaining existing construction must be replaced in order to safely accommodate the new construction, return to the Board to request further variance approval for the pre-existing lot width deviation, and the Board retains jurisdiction of this matter for such purpose and all related purposes;
- (10) The Applicant shall provide a certification or affidavit under penalty of perjury from the other owner of the subject property, understood to be Rosanna Antogiovanni, wherein she confirms the Applicant's authority to act as her agent in the prosecution of the subject variance application and consents to the variance relief afforded herein, inclusive of all conditions of approval, including, but not limited to, the condition relating to the provision to the Township of the stream buffer conservation easement set forth herein, and whereby she agrees that she shall execute the conservation easement documentation and otherwise comply with all obligations of the Applicant as set forth in this Resolution;
- (11) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (12) The 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

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

ROLL CALL VOTE:

Those in Favor: Lasko, Miller, Plaza, Schulenburg, 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 March 3, 2010 as copied from the Minutes of said meeting.

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

Dated: \_\_\_\_\_, 2010