

**BERNARDS TOWNSHIP  
BOARD OF ADJUSTMENT  
MINUTES  
Regular Meeting  
April 7, 2010**

Vice Chair Schulenburg called the regular meeting to order at 7:35 p.m.

**ROLL CALL:**

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

Members absent: Lasko, Orr, Ross

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, Bernards-ville, 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.”

Mr. Warner swore in Mr. Rhatican as Alternate #1, filing the unexpired term of Scott Ross, expiring December 31, 2010.

**APPROVAL OF MINUTES**

The motion was made by Mr. Plaza and seconded by Mr. Miller to approve the minutes of November 4, 2009 as drafted.

Roll call:

Aye: Miller, Plaza, Schulenburg

(Mr. Viola and Mr. Rhatican were ineligible to vote)

Motion carried

The motion was made by Mr. Plaza and seconded by Mr. Miller to approve the minutes of November 12, 2009 as amended.

Roll call:

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

Motion carried.

Board members carried approval of the December 9, 2009 and January 6, 2010 minutes to the April meeting.

#### **APPROVAL OF CHARGES AGAINST ESCROW ACCOUNTS**

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

Roll call:

Aye: Miller, Plaza, Viola, Ross, Schulenburg

#### **APPROVAL OF RESOLUTIONS**

##### **RESOLUTION – Arbockelp, LLC – Block 801, Lot 5 – Extension of Preliminary and Final Site Plan and Variance Approvals to January 9, 2011**

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

Roll call:

Aye: Miller, Plaza, Viola, Rhatican, Schulenburg

Motion carried

##### **RESOLUTION – Gallo, Michael and Nancy – Block 5203, Lot 14 – Bulk Variance**

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

Roll call:

Aye: Miller, Plaza, Viola, Rhatican, Schulenburg

Motion carried

##### **RESOLUTION - Demiris, Eleftherios & Mary – Block 5203, Lot 24 – Bulk Variance**

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

Roll call:

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

Motion carried

**RESOLUTION - Conti, Jeffrey & Donna – Block 8802, Lot 21 – Bulk Variances**

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

Roll call:

Aye: Miller, plaza, Viola  
(Mr. Rhatican was ineligible to vote)

Motion carried

**RESOLUTION - Hodges, Stephen & Claudia – Block 3201, Lot 6 – Bulk Variances**

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

Roll call:

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

**COMPLETENESS REVIEW – MetroPCS New York, LLC – Block 801, Lot 3 – 175 Morristown Road – Use Variance, Preliminary and Final Site Plan and Bulk Variance**

Mr. Schley stated as per his March 17, 2010 memo, that three items had not been submitted. He noted that the applicant's attorney informed him that they will be submitting revised plans.

The motion was made by Mr. Plaza and seconded by Mr. Miller to deem the application incomplete.

Roll call:

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

**COMPLETENESS & PUBLIC HEARING – STOWARZ, STEVEN – Block 11003, Lot 2 – 340 Mountain Road – Bulk Variance**

Steven Stowarz, 340 Mountain Road, Mr. Schley and Mr. Messina were sworn in. Mr. Stowarz said that he installed a gate onto the existing fencing on his property. He added mesh to the fence to keep deer out of the yard. When the Township Zoning Officer inspected the construction of his pool and the required pool fencing, he was told that he needed a variance for the fence and gate. Mr. Stowarz said that none of his neighbors had a problem with his fence. He submitted as Exhibit A-1 a piece of the mesh fabric.

Mr. Stowarz agreed that there would be no change to the materials used. He also said that this fence kept the deer out.

Public hearing was opened for questions and comments on this application. Seeing no one, the public portion of this hearing on this application was closed.

Board members discussed the impact of the fencing on neighboring properties, the permanent nature of the fencing, and the lack of visual impact.

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 subject to maintaining the fence in its existing condition.

Roll call:

Aye: Miller, Plaza, Viola, Rhatican, Schulenburg

Motion carried

**COMPLETENESS REVIEW & PUBLIC HEARING – RAMAZZOTTO, JOHN and SUSAN – Block 602, Lot 9 – 126 Fieldstone Drive – Bulk Variance**

Mr. Rhatican recused himself from this application.

John and Susan Ramazzotto, 126 Fieldstone Drive, Mr. Schley and Mr. Messina were sworn in. The Ramazzottos said that they want to demolish the existing house and construct a new one using a similar footprint. They requested relief from the lot width requirement.

They agreed to comply with Comments 3, 4, 6 and 7 in Mr. Schley's March 31, 2010 memo. They stated that no trees would be affected.

Public hearing was opened for questions and of these witnesses and comments on the application.

- Jay Ignout, 3457 Valley Road – asked about runoff issues.
- Susan Uber, 62 Fieldstone Drive – was sworn in. She said that there were drainage problems in this neighborhood. She was concerned that this new construction could have an adverse impact on the Ramazzottos' neighbors.

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

The motion was made by Mr. Miller 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 comments in Mr. Schley's March 31, 2010 memo.

Roll call:

Aye: Miller, Plaza, Viola, Schulenburg

Motion carried

Mr. Rhatican re-joined the meeting.

**COMPLETENESS REVIEW & PUBLIC HEARING – AHMED, SHAKIL – Block 2502, Lot 11 – 42 Flintlock Court – Bulk Variance**

Shakil Ahmed, 42 Flintlock Court, Mr. Schley and Mr. Messina were sworn in. Mr. Ahmed said that he wanted to build a 27 sq ft addition to the kitchen in his house. This required relief from the rear yard setback.

Board members discussed that this was a corner lot and that under current ordinance there is no building envelope on the property.

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

The motion was made by Mr. Rhatican and seconded by Mr. Viola to deem the application complete and to direct the Board Attorney to draft a resolution approving the application.

Roll call:

Aye: Miller, Plaza, Viola, Rhatican, Schulenburg

Motion carried

**Discussion – Supplemental Recommendation to the 2009 ANNUAL Report concerning the creation of a Historic Preservation Committee**

Board members decided to carry this discussion to the May 5, 2010 meeting.

The Board moved to adjourn the public meeting at 8:50 p.m., there being no further business to discuss.

Respectfully submitted,

Frances Florio  
Secretary to the Board

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ARBORKELP, LLC  
Case No. ZB07-018A**

**RESOLUTION – EXTENSION**

WHEREAS, ARBORKELP, LLC (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for an extension of the preliminary and final site plan and use/bulk variance approval heretofore granted to it, pursuant to a Resolution adopted by the Board on January 9, 2008 in Case No. ZB07-018, the aforesaid approval pertaining to the use of the site for a tree and lawn maintenance business, including conversion of an existing dwelling to office use and construction of a 4,400 square foot garage/storage building, on property identified as Block 801, Lot 5 (formerly Block 6, Lot 3) on the Tax Map, more commonly known as 370 North Maple Avenue; and

WHEREAS, N.J.S.A. 40:55D-52a provides that “the zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer . . . whether conditionally or otherwise, shall not be changed for a period of two years after the date on which the resolution of final approval is adopted”, and further that the Board “may extend such period of protection for extensions of one year but not to exceed three extensions.”; and

WHEREAS, pursuant to Section 21-5.10 of the Land Development 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,

however, if a variance is granted in conjunction with simultaneous development plan approval, the variance shall expire at the same time as the development approval; and

WHEREAS, the Applicant has requested, in accordance with the aforementioned provisions of the Municipal Land Use Law and the Land Development Ordinance, respectively, that the Board grant it an extension of one (1) year from the date of the expiration of the aforementioned approvals; 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 good cause exists for the requested one (1) year extension of the approvals. The Board accepts the testimony on behalf of the Applicant that the approval was granted in the midst of a severe downturn in the economy not foreseen by the Applicant and that, as a result of this unforeseen financial situation, the Applicant was unable to proceed with the development plans and has elected to list the property for sale. The Board recognizes that the extension will give the Applicant an opportunity to either (1) convey the property, noting that the Applicant has informed the Board that it has received several offers for the use of this property as an office, which is a permitted use in the E-5 zone, or, (2) in the alternative, use the property itself when the economy recovers. The Board takes into consideration that there has been no zoning change which would affect the subject project since the grant of the original approvals, such that there is no such countervailing factor against a grant of an extension, unlike the factual scenario before the Court in Jordan Developers v. Planning Board, 256 N.J. Super. 676, 679-680 (App. Div. 1992).

NOW, THREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Bernards, on this 3<sup>rd</sup> day of March, 2010, that the application of Arborkelp, LLC for an extension of the preliminary and final site plan and use/bulk variance approval heretofore granted to it, as aforesaid, be, and the same is hereby, granted until January 9, 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 January 9, 2008 in Case No. ZB07-018.

ROLL CALL VOTE:

Those in Favor: Miller, Plaza, Schulenburg, Viola, Ross, Rhatican, 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 April 7, 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

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**MICHAEL AND NANCY GALLO  
Case No. ZB09-025**

**RESOLUTION**

WHEREAS, MICHAEL AND NANCY GALLO (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 approximately 500 square foot open deck and approximately 110 square foot shed which had already been constructed to the rear of the existing single-family dwelling on property identified as Block 5203, Lot 14 on the Tax Map, more commonly known as 383 Grist Mill Drive:

(1) A variance for a front-yard (east) setback of approximately 70 feet to the existing deck, whereas the pre-construction existing front-yard setback to the dwelling was and remains 47 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;

(2) A variance for a rear-yard (west) setback of 32.8 feet to the existing deck, whereas the pre-construction existing rear-yard setback to the dwelling was and remains 42.83 feet, and whereas the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

(3) A variance for a rear-yard setback of 12.6 feet to the existing shed, whereas the minimum required rear-yard setback for an accessory structure in an R-4 (1 acre) residential zone is 20 feet, pursuant to Section 21-16.1(c) and Table 507 of the Land Development Ordinance; and

WHEREAS, public hearings on notice were held on such application on February 3, and March 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 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 long (north to south) and narrow (east to west) tract of land with a depth of approximately 495 feet and a width of approximately 175 feet. The property is improved with a two-story frame dwelling and an approximately 500 square foot open deck on the rear of the dwelling.
3. The existing dwelling is nonconforming in that it violates the 75 foot setback for both the front- and rear-yard, due to the narrowness of the property, a gas pipeline right-of-way that traverses the property and the orientation and location of the dwelling on the lot. The prior owner apparently constructed the nonconforming deck and shed and the current owners purchased the dwelling with the nonconforming deck in April of 2009. The Applicants now requests the subject variance relief in order to maintain the deck and shed as they currently exist.
4. The Applicants submitted a Survey Map prepared by Benjamin and Wizorek, Inc., Professional Engineers & Land Surveyors, dated March 11, 2009, depicting the lot and the existing two-story frame dwelling with the deck and shed to the rear of the dwelling.

5. The property is located in the R-4 (1 acre) residential zone. The requested variance relief for the front- and rear-yard setbacks for the principal and accessory structures falls within the criteria of N.J.S.A. 40:55D-70(c).

6. By Memorandum dated November 16, 2009, the Environmental Commission noted that it had no environmental concerns at that time.

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. Michael Gallo, one of the Applicants, residing at 383 Grist Mill Drive, Basking Ridge, New Jersey, was duly sworn according to law. Mr. Gallo testified generally regarding the existing conditions at the subject property. He testified that he was notified of the zoning violation related to the deck only two days prior to the closing, after being in escrow with the sellers for over one month and while the Applicants' moving truck was already en route from California at the time. Mr. Gallo testified that rather than incur complications in the moving process and substantial unexpected costs, the Applicants chose to inherit the zoning violation at the property purchase and subsequently seek approval from the Board. On questioning by a Board Member, Mr. Gallo confirmed that the couple received an adjustment from the sellers at the time of the closing to provide the funds necessary to seek the subject variance relief.

9. Mr. Gallo testified that it appears that the subject deck was constructed above an older and slightly smaller one, and that while he does not know the date of the construction of

the older deck, nor does he know the date of the construction of the subject deck, he testified that it appears to him that the subject deck was constructed approximately 5 years ago.

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

11. On questioning by the Board Attorney, Mr. Gallo testified regarding the existing shed and tree house, both of which violate the rear-yard setback requirements for accessory structures. He testified that it appeared to him that these structures were constructed/installed approximately 4 to 5 years ago. He testified that, while he spoke with some of the twelve “200 foot” neighboring property owners, he did not speak with the adjacent neighbors most affected by the tree house structure. The Board noted that the tree house actually appears on the Survey to be straddling both the subject property and the adjacent lot to the west. The Board directed the Applicants to provide it with photographs and measurements of the tree house and its location on the property, as well as to communicate with the neighboring property owners of the adjacent lot to the west to inquire whether they object to the continued existence of the tree house at its current location. The Board also inquired whether the accessory shed could be moved so as to conform with the rear-yard setback requirement, and it similarly directed the Applicants to provide photographs of the shed and its location on the property.

12. Pursuant to the Board’s direction, Mr. Gallo testified as follows on the continuation of the hearing. Mr. Gallo testified that on February 28, 2010 he spoke with Mrs.

Arrigan, an owner of 460 Mount Airy Road (Lot 16), on whose property the tree house appears to encroach, and she expressed no concerns about the tree house to him. Mr. Gallo further testified that on March 1, he spoke with Mrs. Bruno, an owner of 452 Mount Airy Road (Lot 17), since she can see the tree house from her property. He informed the Board that Mrs. Bruno told him that she and her husband had no concerns at all about the tree house.

13. Mr. Gallo then introduced into evidence, as Exhibit A-1, a compendium consisting of a cover sheet with measurements and dimensions of the subject tree house and shed, followed by six photographs of one or both of the accessory structures from various views.

14. On questioning by Board Members, Mr. Gallo testified that he was unable to determine whether the tree containing the tree house was located on his property or that of his neighbor, the Arrigans, on Lot 16. He reiterated, however, that the Arrigans did not oppose the continued existence of the tree house. Mr. Gallo also confirmed that there were no utilities located in the tree house.

15. The Board Planner reminded the Applicants that they were required to obtain the requisite building permits for the shed, notwithstanding that it already has been constructed and regardless of whether or not a determination is made to relocate it so as to conform to the side-yard setback requirement for accessory structures.

16. The Applicants stipulated, as a condition of approval, to the deck remaining “an open deck” as defined by Section 21-18.A.1, specifically that it will remain “a raised platform

not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open.”

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

18. 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).

19. First, as to the positive criteria, 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. The Board finds that the building envelope and the orientation of the existing dwelling, taken together with the unusually narrow shape of the property, makes it impractical for the Applicants to construct what would otherwise be a normal addition to the existing dwelling. The Board recognizes that this is further complicated by the existence of the gas pipeline right-of-way that traverses the property.

20. More specifically, the evidence revealed as follows: The property has a long (north to south) and narrow (east to west) orientation, and the dwelling runs parallel to these property lines and perpendicular to the street. The front door opens towards the east side of the property and not the street, which causes the front and back yards to be relatively small compared to the size of the property, bringing the front and rear portions of the building envelope very close to the property lines. Another way to view the property orientation is that

the front and rear yards are located where the side yards are located on normally situated properties, and vice versa. The sideyards range from 150 to more than 200 feet from the property line (street frontage and rear of property). The back yard is only about approximately 42 feet from the existing dwelling to the property line at the closest point on the west side, while the frontyard ranges from 47 to 61 feet from the dwelling to the property line (east side of the property). The Applicants testified that the existing deck seems to have been built on top of another deck and is located off of the only door the house that is reasonable and appropriate for a deck. The property's other two doors are the front door (facing east) and another directly out onto the driveway. Thus, the Board concludes that the existing nonconforming deck is a result of the location of the original deck built below it, the orientation of the existing dwelling, its rooms and doors, and the unusual property dimensions.

21. The Board further finds that the deck is not excessively large or unusually configured, but rather encroaches on the rear-yard setback by only a few feet based solely upon the hardship as a result of the property orientation and other referenced factors. The Board recognizes that the Applicant's open deck would have been compliant with the rear-yard requirement under Section 21-18A.2 of the Land Development Ordinance, but for one exception. Section 21-18A.2 provides that a deck will comply with the rear yard setback requirement if it is an open deck", no larger than 600 square feet in area, does not require a variance from the sideyard setback requirements and no part of the surface area of the deck is closer than 15 feet to the rear lot line. The subject deck complies with all of the requirements, however, it does not

satisfy the requirement that the surface area of the deck not protrude into the rear yard setback by more than 50% of the minimum rear yard setback requirement for the zone. Here, that is 50% of 75 feet, which equates to 37.5 feet, however the actual rear yard setback is 32.8 feet, or just under 5 feet less than the minimum setback required under Section 21-18A.2.

22. Second, the Board 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 zone plan and zoning ordinance. The Board finds that the deck is adequately screened from the view of adjacent property owners. The evidence revealed that the deck is low to the ground and the subject property's geography, topography and location within the neighborhood, as well as the orientation of the dwelling relative to the neighborhood, adequately screens the deck from neighboring properties. The evidence further revealed that, with the deck's location to the rear of the dwelling (the west side of the property towards Mount Airy Road), the several homes located to that side of the property, and within possible view of the deck, are located apparently more than 150 feet from the deck, downhill from the subject property and through a densely treed area. Finally, the evidence revealed that the deck is not visibly intrusive to neighbors, nor is it encroaching on property lines, to the south (street), north or east.

WHEREAS, the Board took action on this application at its meeting on March 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 March, 2010, that the application of Michael and Nancy Gallo, 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 subject deck shall remain an "open deck" as defined by Section 21-18A.1, specifically, it shall remain "a raised platform not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open";
- (3) The rear-yard setback variance relief granted herein will be limited solely to the existing shed depicted as, and located, on the plans submitted with the application materials;
- (4) The Applicants shall apply for, and obtain from the Township, a construction permit for the as-built shed located in the rear-yard;
- (5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (6) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- (7) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances 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: Miller, Plaza, Schulenburg, Viola, Ross, Rhatican, 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 April 7, 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

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ELEFThERIOS AND MARY DEMIRIS  
Case No. ZB10-001**

**RESOLUTION**

WHEREAS, ELEFThERIOS and MARY DEMIRIS (the “Applicants”) have 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 700 square foot inground swimming pool with attached spa (50 square feet) and surrounding pool deck/patio (483 square feet) in the rear yard of property identified as Block 5203, Lot 24 on the Tax Map, more commonly known as 32 Oak Hill Drive:

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 March 3, 2010 at which time interested citizens were afforded an opportunity to 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 located on the bulb of the cul-de-sac of Oak Hill Drive and is an approximately 1.455 acre lot. There presently exists on the property a two-story, frame and brick, single family residential dwelling with an existing deck with patio underneath and associated driveways and paver walkways. The lot also has an existing detention trench in the northwest corner and a 50 foot wide utility easement/sewer easement traversing the rear of the property.

3. The proposal calls for the construction of an approximately 700 square foot kidney shaped inground swimming pool with attached approximately 50 foot spa and surrounding pool deck/patio with approximately 483 square feet. The proposal also includes removal of portions of the existing driveway and construction of a new front walkway.

4. The Applicants' proposal is depicted on a Pool Variance Plan (one (1) sheet) prepared by William G. Hollows, P.E., L.S., P.P. of Murphy & Hollows Associates, Inc., dated January 19, 2010.

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

6. 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.

7. Eleftherios ("Teddy") and Mary Demiris, the Applicants, residing at 32 Oak Hill Drive, were duly sworn according to law. Mrs. Demiris testified that the Applicants were seeking a c-1 hardship variance and that they had discussed their pool proposal with their

neighbors on adjoining Lots 23 and 25 and she testified that both the Mielees (Lot 25) and the Starrs (Lot 23) were supportive of the application.

8. Mrs. Demiris testified that the Applicants have a contract to sell their home and the contract is contingent upon their obtaining variance approval to construct the subject inground swimming pool. She testified that she took the photographs that were submitted with the application materials approximately one month ago and that they depict the viewshed in multiple directions from the area in which the pool is proposed to be located. Mrs. Demiris explained that they were removing a portion of the existing driveway which would eliminate the existing impervious coverage deviation since it would reduce the coverage ratio from 17.2% to 14.9%, and thus below the 15% maximum.

9. The Applicants marked into evidence, as Exhibit A-1 through A-3, the previously referenced photographs submitted with the application materials.

10. Robert Telesmanic was duly sworn according to law. Mr. Telesmanic testified that he is the contract purchaser of the subject property. He confirmed that the contract for the purchase of the home is contingent upon the Applicants obtaining variance approval to construct an inground swimming pool. Mr. Telesmanic testified that he and his wife have two children, ages 9 and 11, and that the ability to locate the inground swimming pool to the rear of the home was a material issue to them. He testified that while he has not yet put together a detailed landscaping design, Mr. Demiris, who himself is a builder, will be the general contractor for the project and they will utilize Carlton Pool Company for the construction and installation of the swimming pool and related equipment.

11. Mr. Telesmanic testified that he was willing to consider reasonable conditions to minimize the noise, visibility and drainage impacts of the proposal on the neighboring property owners to the north, east and west of the subject property. He explained that he proposes to install an aluminum ornamental fence around the perimeter of the pool. The Board Planner explained that while landscaping and security lighting in, and around, the pool is permitted, the Land Development Ordinance prohibits lighting for the purpose of utilizing the pool at night.

12. On questioning and comment by members of the public, neighboring property owners the Strahs at 39 Bullion Road (Lot 5), Sarah Booth at 33 Bullion Road (Lot 4), and Robert Pierson at 347 Grist Mill Drive (Lot 9), and Martin Urbas at 343 Grist Mill Drive (Lot 8), the Applicants, after obtaining approval and confirmation from the contract purchaser, Mr. Telesmanic, stipulated to the following conditions of approval:

(a) The location of the inground swimming pool and related equipment shall be substantially the same as is depicted on the plans submitted with the application materials;

(b) The pool filter and related equipment shall be screened from the view, and for noise attenuation purposes, of neighboring property owners to the north, east and south, such screening to be subject to the review and approval of the Township Engineering Department prior to the issuance of the requisite permits;

(c) The Applicants shall install landscape buffering and fencing for purposes of screening the inground pool and related facilities from the view of the neighboring property owners to the north, east and south, such landscape buffering and fencing to be subject to the

review and approval of the Township Engineering Department prior to the issuance of the requisite permits;

(d) The Applicants shall demonstrate to the satisfaction of the Township Engineering Department, prior to the issuance of the requisite permits, that there will be no net increase in stormwater runoff as a result of the proposed development or, in the alternative, the Applicants shall provide sufficient stormwater management measures so as to accomplish same;

(e) The Applicants shall replace the 24 inch oak tree located in the area of the proposed inground swimming pool and shall otherwise comply with all regulations and requirements of the Township's Tree Replacement Ordinance; and

(f) The Applicants shall use the New Jersey Department of Environmental Protection's (N.J.D.E.P.) "Best Management Practices" when discharging pool water, in accordance with the February 16, 2009 Memorandum of the Environmental Commission.

13. The Applicants also stipulated, as a condition of approval, to providing soil erosion and sediment control measures as required in accordance with Section 21-42.1.f.2 of the Land Development Ordinance, and that such measures as shown on the plans shall be subject to further review and approval by the Township Engineer prior to the issuance of a building permit.

14. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, concludes 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).

15. 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 Applicants. 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 difficulties or hardships. The Board recognizes that, due to the layout of the existing lots/dwellings, which front on the bulb of the Oak Hill Drive cul-de-sac, it is not possible for the Applicants to comply with the pool location requirement. The proposed pool cannot be installed to the rear of the dwellings on either adjoining Lots 23 or 25, both of which are located to the west and to the front of the Applicants' lot.

16. The Board notes that the proposed pool is over 300 feet from each of the dwellings on Lot 23 and 25, and views of the pool from those dwellings, in the Board's opinion, will be largely (if not entirely) obstructed by the Applicants' dwelling. The Board also recognizes the additional zoning benefits to be derived from the elimination of the existing maximum lot coverage deviation. The existing impervious coverage ratio of 17.2% exceeds the maximum permitted coverage ratio of 15%, however, the proposed removal of portions of the existing driveway, notwithstanding the construction of a new front walkway, will result in a net decrease of the overall impervious coverage such that the subsequent coverage ratio will be a conforming 14.9%.

17. The Board further finds that the Applicants have satisfied the negative criteria, that is, that 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 March 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 March, 2010, that the application of Eleftherios and Mary Demiris 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 submit soil erosion and sediment control measures as required in accordance with Section 21-42.1.f.2 of the Land Development Ordinance and such measures as shown on the plans shall be subject to further review and approval by the Township Engineer prior to the issuance of a building permit;
- (3) The Applicants shall locate the inground swimming pool and related equipment such that it shall be substantially the same as is depicted on the plans submitted with the application materials;
- (4) The Applicants shall screen the pool filter and related equipment from the view, and for noise attenuation purposes, of neighboring property owners to the north, east and south and such screening shall be subject to the review and approval of the Township Engineering Department prior to the issuance of the requisite permits;
- (5) The Applicants shall install landscape buffering and fencing for purposes of screening the inground pool and related facilities from the view of the neighboring property owners to the north, east and south, such landscape buffering and fencing to be subject to the review and approval of the Township Engineering Department prior to the issuance of the requisite permits;

- (6) The Applicants shall demonstrate, to the satisfaction of the Township Engineering Department, prior to the issuance of the requisite permits, that there will be no net increase in stormwater runoff as a result of the proposed development or, in the alternative, the Applicants shall provide sufficient stormwater management measures so as to accomplish same;
- (7) The Applicants shall replace the 24 inch oak tree located in the area of the proposed inground swimming pool and shall otherwise comply with all regulations and requirements of the Township's Tree Replacement Ordinance;
- (8) The Applicants shall use the N.J.D.E.P.'s "Best Management Practices" when discharging pool water, in accordance with the February 16, 2009 Memorandum of the Environmental Commission;
- (9) 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;
- (10) 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
- (11) 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: Plaza, Schulenburg, Viola, Ross, Rhatican, 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 April 7, 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

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**JEFFREY W. AND DONNA M. CONTI  
Case No. ZB09-026**

**RESOLUTION**

WHEREAS, JEFFREY W. AND DONNA M. CONTI (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following variances in connection with the construction of an approximately 800 square foot inground swimming pool with attached spa and surrounding patio, and an approximately 120 square foot shed, all in the rear-yard, and the expansion of an existing deck at the rear, of the existing dwelling at property identified as Block 8802, Lot 21 on the Tax Map, more commonly known as 3 Saint Nickolas Way:

1. A variance for locating an inground swimming pool not behind the rear building line of an existing residential structure on an adjoining lot, in violation of Section 21-18.1 of the Land Development Ordinance; and

2. A variance for lot coverage of 15.4%, whereas the maximum permitted lot coverage in an 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 March 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 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 0.95 acre slightly undersized lot and is a corner lot located on Saint Nickolas Way but with the front of the dwelling facing Valley Road. There presently exists on the lot a two-story, frame single-family dwelling, with an existing wood deck to the rear and associated driveways and walkways.
3. The Applicants propose to install an approximately 20 foot by 40 foot (800 square foot) inground swimming pool with attached spa and surrounding patio, and a 10 foot by 12 foot (120 square foot) shed, all in the Applicants' rear-yard. The proposal also includes expansion of an existing deck at the rear of the dwelling.
4. The Applicants' proposal is depicted on a Pool Plan prepared by John Cilo, Jr., P.E. & L.S., of John Cilo, Jr. Associates, dated August 1, 2009, and last revised November 8, 2009, same consisting of two (2) sheets (Pool Plan, Soil Erosion & Sediment Control). The Applicants also submitted a Planting Plan prepared by Richard M. Milsek of Nature's Apprentice, Landscape Architects & Contractors, dated August 12, 2009 and last revised August 24, 2009, same consisting of one (1) page.
5. This lot is located in the R-4 (1 acre) residential zone. The pool location and impervious lot coverage variances fall within the purview of N.J.S.A. 40:55D-70(c).
6. By Memorandum dated December 16, 2009, the Environmental Commission noted its concerns regarding stormwater management and groundwater quality and the disturbance of natural vegetation. The Environmental Commission therein also indicated that it does not support impervious coverage of limits above the maximum allowable limits, and also

urged residents to use the best management practices available when discharging pool water and provided the relevant websites to access information regarding same.

7. The Applicants submitted a letter from Nancy Weaver, P.P., A.I.C.P., on behalf of John Cilo, Jr. Associates, Inc., dated November 13, 2009, stating that there are no wetlands on the site, or within 150 feet of the proposed activity.

8. 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.

9. Donna M. Conti, one of the Applicants, residing at 3 Saint Nickolas Way, was duly sworn according to law. Mrs. Conti testified that she and her husband have resided at the subject premises with their three children for the past six years and she believes the home is approximately twelve years old. She confirmed that the property is a corner lot located on Saint Nickolas Way but with the front of the home facing Valley Road. Mrs. Conti testified that she had spoken about the proposed pool and related development with all of her neighbors and that they all were in support of the application, but for the Lofredos at 15 Saint Nickolas Way (Lot 22). The Lofredos are the owners of the lot immediately to the west of the subject property, whose rear building line the proposed inground swimming pool would not be located behind, and they are the property owners most affected by the proposed development.

10. The Applicants introduced into evidence, as Exhibit A-1, a photograph depicting the view from the Applicants' rear deck to the backyard and the neighbors' property immediately to the west of the subject property. The Applicants also introduced into evidence, as Exhibit A-2, a photograph of the view of the subject premises from Saint Nickolas Way looking between

the lot lines of the subject lot and Lot 22. Mrs. Conti testified that she took both photographs on February 28, 2010.

11. Mrs. Conti testified regarding the existing vegetative buffer that exists between the subject property and Lot 22 to the west. She testified that approximately  $\frac{3}{4}$  of the westerly property line is lined with 15 to 20 foot evergreen trees, and that the balance of the westerly property line has some shrubs which are sparse at the bottom. She testified that she was proposing additional shrubbery in that area and that her landscape architect would testify in further detail regarding same. Mrs. Conti testified that to the north she proposed a solid cedar fence with additional shrubbery and that the neighbor to the north had no objection to the proposed development. She also testified that she proposed an aluminum ornamental fence around the east, south and west perimeter of the pool.

12. The Applicants introduced into evidence, as Exhibit A-3, a brochure from Jerith Manufacturing Company, Inc. of the type of aluminum fencing proposed by the Applicant for the perimeter of the pool.

13. Mrs. Conti next discussed to what extent she considered removing some of the existing or proposed impervious coverage in order to eliminate the excess 170 square feet (0.4%) of impervious coverage. She testified that she felt she needed to include in their proposal the 120 square foot shed and that she could not reasonably be required to remove a portion of the driveway since it was an expensive driveway with pavers that she just constructed last year. She further testified that the Applicants already had reduced the size of the pool patio in order to bring the total resulting impervious coverage close to the 15% maximum permitted by the Land

Development Ordinance. Mrs. Conti also noted that the Applicants' lot was undersized for the R-4 zone and if it were a conforming 43,560 square foot lot, then the proposed lot coverage would be a conforming 14.6%.

14. The Applicants stipulated, as a condition of approval, to "flipping" the location of the shed and the pool equipment as shown on the plans. The Applicants also stipulated, as a condition of approval, to compliance with the New Jersey Department of Environmental Protection's "Best Management Practices" when discharging pool water, consistent with the Environmental Commissions December 16, 2009 memorandum addressing same.

15. On questioning by Board Members, Mrs. Conti testified that the distance between the dwelling on Lot 22 to the west and the proposed pool would be approximately 60 feet and the distance to the proposed spa approximately 55 feet.

16. Raymond Milsek, with a business address of 18 Lacosta Drive, Annandale, New Jersey, was duly sworn according to law, provided his qualifications and experience, and was accepted by the Board as an expert in the field of landscape architecture. Mr. Milsek testified that he prepared the landscape plan for the proposed development on the subject property and he prepared the colorized landscape plan which the Applicants introduced into evidence as Exhibit A-4. Mr. Milsek testified regarding the proposed landscape buffering around the perimeter of the property, including the existing approximately 10 to 20 foot high evergreen trees along  $\frac{3}{4}$  of the westerly property line and the evergreen shrubbery along the balance of the westerly property line. He testified that he proposed a solid cedar fence with clusters of shrubs to soften same along the northerly property line. He also testified regarding additional landscaping near the

driveway to screen the view of the pool and related facilities from the streetscape along Saint Nickolas Way.

17. Mr. Milsek testified that the property slopes down from the west to the east. He testified that he proposed to install a few 30 inch high shrubs to supplement the existing evergreen shrubbery along the one-quarter portion of the westerly property line between the subject property and adjacent Lot 22.

18. James A. Lofredo and Kathleen H. Finneran, both residing at 15 Saint Nickolas Way, Basking Ridge, New Jersey, were duly sworn according to law. Mr. Lofredo and Ms. Finneran testified that they were the owners of adjacent Lot 22 and were the property owners most affected by the proposed development. They testified that they vigorously opposed the proposal, contending that same would constitute a substantial detriment to the public good in light of the significant negative visual and noise impact that the pool location would have on their family in light of the proximity and layout of their home. They testified that they were merely 50 feet away from the proposed pool location and the second floor of their home nearest to the pool includes their bedrooms, bathrooms and office. Mr. Lofredo and Ms. Finneran contended that a private inground swimming pool did not constitute a necessity and, that in light of the significant negative visual and noise impact on them, they opined that the proposal would constitute a substantial detriment to the public good.

19. Mr. Lofredo and Ms. Finneran introduced into evidence, as Exhibit O-1, a set of 14 photographs that they took within the past month. Mr. Lofredo described the photographs as follows: Photograph #1 entitled “Plant Drawing” was a photograph of the Pool Plan colorized to

indicate that portion of the pool area behind their rear building line (green), that portion of the pool area located behind their front building line and hence in their side-yard (red) and that portion of the pool area that would be in front of their front building line and hence adjacent to their front-yard (magenta). The next few photographs depicted views of the proposed pool area from the objectors' master bath, master bedroom, office windows, first floor bathroom and living room windows. The next two photographs depicted the side of the objectors' home labeling each window with the corresponding room of the home. The balance of the photographs depicted the view of the proposed pool area from Saint Nickolas Way, the front lawn near the street, the side-yard of Lot 22, the front of the house on Lot 22, the front walk by the front door of the house on Lot 22 and from Lot 22's front walkway.

20. Mr. Lofredo and Ms. Finneran testified that out of the eleven homes along Saint Nickolas Way only three of the homes had private inground swimming pools, all three were behind the rear building line of existing residential structures on adjoining lots, and none of them were visible from the street. The objectors concluded by contending that since existing residential dwelling was merely 50 feet away from the proposed pool area, they had a clear view of same and the noise from the use of the pool, together with the negative visual impact, would be a nuisance to them and, in their opinion, constitute a substantial detriment to the public good.

21. After reviewing the evidence submitted, the Board, by a vote of 6 to 1, finds that the Applicants have not satisfied their burden of proving an entitlement to the requested pool location variance relief under N.J.S.A. 40:55D-70(c)(1), and the request for impervious coverage variance relief is rendered moot as a result thereof.

22. First, with respect to the positive criteria, the Board does find 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. The pool is not located to the rear of the dwelling on adjoining Lot 22 to the west/rear. The Board recognizes that the Applicants' lot is a corner lot and that the front of the dwelling faces Valley Road, while the front of the dwelling on adjoining Lot 22 faces Saint Nickolas Way. The Board finds that, given the existing lot/dwelling layout, it is not possible for the Applicants to comply with the pool location requirement as it relates to adjacent Lot 22.

23. However, the Board finds that the Applicants have not satisfied the negative criteria. Specifically, the Board finds that the Applicants have not demonstrated that the requested relief can be granted without substantial detriment to the public good.

24. The Board finds that the proposed location of the inground swimming pool and related facilities and the use thereof is so proximate to the critical living space (master bedrooms, bathrooms, and office), and within the direct view, of the lawfully existing residential dwelling on adjoining Lot 22 to the immediate west of the subject property, that the inevitable significant detrimental effects from a visual and noise perspective would constitute a substantial detriment to the public good. The Board recognizes that the objector property owners of Lot 22 are the very intended class of persons sought to be protected by the "Pool Location Ordinance" (Section 21-18.1 of the Land Development Ordinance), since they own the adjacent residential structure in front of whose rear building line the proposed inground swimming pool would be located.

The Board is particularly troubled by the fact that virtually the entirety of the pool and pool area would be in front of the rear building line of the dwelling on Lot 22 and, in fact, a significant portion thereof, constituting almost the entirety of the “sun bathing” area, would be adjacent to the front yard of Lot 22.

25. The Board further finds that, due to the particular facts of this case, the inevitable negative visual and noise impacts on the residential owners of Lot 22 could not be sufficiently alleviated by reasonable screening or buffering measures.

26. The Board finds that the impervious coverage variance request is rendered moot as a result of its denial of the requested pool location variance relief.

WHEREAS, the Board took action on this application at its meeting on March 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 March, 2010, that the application of Jeffrey and Donna Conti, as aforesaid, be, and is hereby, denied.

ROLL CALL VOTE:

Those in Favor: Miller, Plaza, Schulenburg, Viola, Ross, Orr

Those Opposed: Rhatican

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 April 7, 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

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**STEPHEN B. AND CLAUDIA I. HODGES  
Case No. ZB09-019**

**RESOLUTION**

WHEREAS, STEPHEN B. AND CLAUDIA I. HODGES (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 expansion to the west side and rear of the existing single-family dwelling on property identified as Block 3201, Lot 6 on the Tax Map, more commonly known as 177 Lord Stirling Road:

(1) A variance for a front-yard setback to the addition of 78.8 feet, whereas the existing front-yard setback is 67.5, and whereas the minimum required front-yard setback in an R-1 (3 acre) residential zone is 100 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance;

(2) A variance for a minimum side-yard setback on the west side of 34.67 feet, whereas the minimum side-yard setback requirement in an R-1 (3 acre) residential zone is 50 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

(3) A variance for a combined side-yard setback of 84.37 feet, whereas the minimum required combined side-yard setback in an R-1 (3 acre) residential zone is 100 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 March 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 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 1.35 acre undersized lot (the R-1 residential zone requires a minimum lot size of 3 acres) fronting on Lord Stirling Road near to the intersection with Riverside Drive. The subject property is presently improved with a two-story, single-family dwelling with an existing metal storage shed and an existing wood storage shed in the rear of the property.
3. The Applicants propose expanding the existing dwelling, including a one-story, approximately 25 foot by 28 foot (approximately 700 square foot) two-car garage addition to the west side and a two-story, approximately 11 foot by 14 foot (approximately 308 square foot) addition to the rear of the existing dwelling. The two-story addition enlarges a family room on the first floor and enlarges a master bedroom on the second floor.
4. The Applicants' proposal is depicted on plans prepared by Nicholas J. Ferrara, Architect/Planner, prepared September 11, 2009, same consisting of four (4) sheets (first floor plan, second floor plan, and two pages of elevations). The Applicants also submitted a Plan of Survey prepared by Jay A. Stuhl, Jr., L.S., of Brunswick Surveying Incorporated, dated October 17, 2008.

5. The property is located in the R-1 (3 acre) residential zone. The requested variances for the front and side-yard deviations fall within the criteria of N.J.S.A. 40:55D-70(c).

6. The Applicants also submitted a letter report from John Peel, P.P., of PK Environmental Planning & Engineering, dated December 17, 2009, concluding that since the residential improvements will be accomplished within a previously disturbed wetland transition area, the site improvements will not cause a substantial or significant alteration to any wetlands or wetland transition area, and that this activity will have no negative environmental effects from stormwater runoff. Attached to the PK Environmental letter report are two photos of the subject dwelling and a Plot Plan dated December 23, 2009.

7. The Environmental Commission submitted a Memorandum dated January 19, 2010 noting that it had no environmental concerns at that time.

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

9. Stephen B. Hodges, one of the Applicants, residing at 177 Lord Stirling Road, was duly sworn according to law. Mr. Hodges testified the subject lot is an undersized lot (1.35 acre vs. 3 acres) fronting on Lord Stirling Road. He testified that the residential dwelling existing thereon was built in 1968. He testified regarding the proposed addition to the west side of the dwelling which would provide the Applicants with a needed two-car garage and the two-story addition to the rear of the dwelling which would provide the additional living space. Mr. Hodges explained that the Applicants considered a detached garage, which would not require setback variance relief, but that, in his opinion, it would be less beneficial and more visually intrusive. The Board Planner concurred with the Applicants' opinion in this regard.

10. The Board Engineer testified that there was an approximately 50 foot wide swath of vacant land to the west of the subject property on which no structure could be built, thus effectively resulting in a greater setback distance to the west.

11. Mr. Hodges testified that he took the photographs that were submitted with the application materials in September of 2009 and that same accurately depicted the existing conditions of the residential dwelling thereon.

12. The Applicants stipulated, as a condition of approval, to providing the Township with a conservation easement encompassing the wetlands and wetland transition area, delineated with Township standard markers, which must be installed, or

bonded for, prior to the issuance of a building permit, and that the easement shall be prepared by the Township Attorney, executed by the Applicants and recorded with the Somerset County Clerk, prior to the issuance of the building permit.

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

14. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, found 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. First, under the “(c)(1)” or “hardship” criteria, 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. The Board recognizes that most of the existing dwelling is located within the required front-yard setback area, leaving limited options for a conforming addition. Although not conforming, the proposed addition provides a greater front-yard setback than the existing dwelling and avoids disturbance of the wetland transition area located to the rear of the dwelling. The Board also notes that the proposed addition would have complied with all setback requirements that were in effect prior to the ordinance amendments adopted in 1999.

16. Second, 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. The Board also recognizes the stormwater management and groundwater quality benefits to be derived from that aspect of the proposal that calls for the removal of a section of the asphalt driveway.

17. Third, and finally, the Board 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 zone plan and zoning ordinance.

WHEREAS, the Board took action on this application at its meeting on March 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 March, 2010, that the application of Stephen B. and Claudia I. Hodges, 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 to the Township a conservation easement encompassing the wetlands/wetland transition area on the property. The easement boundary must be delineated with Township standard markers, which must be installed, or bonded for, prior to the issuance of a building permit. The easement shall be prepared by the Township Attorney, executed by the Applicants and recorded with the Somerset County Clerk, prior to the issuance of a building permit;

- (3) The Applicants shall utilize building materials for the addition so as to substantially match the materials utilized for the exterior of the existing dwelling and result in a substantially uniform exterior;
- (4) 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;
- (5) 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
- (6) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Miller, Plaza, Schulenburg, Viola, Ross, Rhatican, 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 April 7, 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