BERNARDS TOWNSHIP
BOARD OF ADJUSTMENT
MINUTES
Regular Meeting
May 5, 2010

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

ROLL CALL:
Members present: Lasko, Orr, Schulenburg, Ross, Viola, Rhatican
Members absent: Plaza
Members late: Miller (7:39 p.m.)
Board Attorney Steven Warner, Esq., 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."

Mr. Warner swore in Mr. Ross as a Regular Member, filing the unexpired term of Lisa Marshall, expiring December 31, 2012.

APPROVAL OF MINUTES
The motion was made by Mr. Lasko and seconded by Mr. Schulenburg to approve the minutes of December 9, 2009, as drafted.
Roll call:
Aye: Lasko, Schulenburg, Orr
(Mr. Ross, Mr. Viola and Mr. Rhatican were ineligible to vote)
Motion carried

The motion was made by Mr. Viola and seconded by Mr. Ross to approve the minutes of January 6, 2010 as drafted.
Roll call:
Aye: Lasko, Ross, Viola, Rhatican, Orr
(Mr. Schulenburg was ineligible to vote)
Motion carried

The motion was made by Mr. Lasko and seconded by Mr. Ross to approve the minutes of February 3, 2010 as drafted.
Roll call:
Aye: Lasko, Schulenburg, Ross, Viola, Rhatican, Orr
Motion carried

APPROVAL OF CHARGES AGAINST ESCROW ACCOUNTS
The motion was made by Mr. Schulenburg and seconded by Mr. Viola to approve escrow charges from David Schley for April 2010, Peter Messina for April 2010, and Steven Warner, Esq. for March 2010.
Roll call:
Aye: Lasko, Schulenburg, Ross, Viola, Rhatican, Orr
Motion carried

Mr. Miller joined the meeting.

APPROVAL OF RESOLUTIONS
RESOLUTION – Stowarz, Steven – Block 11003, Lot 2 – Bulk Variance
The motion was made by Mr. Rhatican and seconded by Mr. Viola to approve the resolution as drafted.
Roll call:
Aye: Miller, Schulenburg, Viola, Rhatican
(Mr. Lasko, Mr. Orr and Mr. Ross were ineligible to vote)
Motion carried

RESOLUTION – Ramazzotto, John & Susan – Block 602, Lot 9 – Bulk Variance
The motion was made by Mr. Schulenburg and seconded by Mr. Miller to approve the resolution as drafted.
Roll call:
Aye: Miller, Schulenburg, Viola
(Mr. Lasko, Mr. Orr, Mr. Ross, and Mr. Rhatican were ineligible to vote)
Motion carried

RESOLUTION – Ahmed, Shakil – Block 2502, Lot 11 – Bulk Variance
The motion was made by Mr. Miller and seconded by Mr. Viola to approve the resolution as drafted.
Roll call:
Aye: Miller, Ross, Viola, Rhatican
(Mr. Lasko, Mr. Orr, and Mr. Ross were ineligible to vote)
Motion carried

COMPLETENESS REVIEW – Liberty Corner Presbyterian Church – Block 7501, Lot 4 – 45 Church Street – Amended Preliminary and Final Site Plan Approval, Use and Bulk Variance Approvals
Mr. Schley stated, as per his April 8, 2010 memo, that five items had not been submitted. Since that date, all the required items have been submitted.

The motion was made by Mr. Miller and seconded by Mr. Ross to deem the application complete.
Roll call:

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

COMPLETENESS & PUBLIC HEARING – NEWMAN, CHRISTOPHER and JENNIFER – Block 5701, Lot 21 – 36 Atlas Road – Bulk Variance
Christopher and Jennifer Newman, 36 Atlas Road, Timothy Coleman, architect, Bernardsville, and Mr. Schley were sworn in. The Newmans said that they want to construct a porch over their front stoop. Mr. Coleman submitted as Exhibit A-1 eight photographs of houses in the neighborhood with similar porches. He noted that the Newman house was built at the front yard setback.

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

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

Roll call:
Aye: Lasko, Miller, Schulenburg, Ross, Viola, Rhatican, Orr
Motion carried

COMPLETENESS REVIEW & PUBLIC HEARING – TANCREDI, DAVID and KELLY – Block 7302, Lot 8 – 125 Church Street – Bulk Variances
David Tancredi, 125 Church Street, Patrick Jones, architect, South Orange, NJ, and Mr. Schley were sworn in. Mr. Tancredi said that the existing house is a small ranch-style house with a detached garage. He wants to connect the garage to the house and restructure the roof. He said that all of his neighbors were in favor of this work.

Patrick Jones noted that the existing front yard setback and side yard setbacks are nonconforming and that the existing house is located outside of the building envelope. He presented Exhibit A-1, a plan showing existing conditions, and Exhibit A-2, floor plans of the existing house. He referred to the submitted plans for the proposed addition and said that there would be a basement under the addition. Mr. Tancredi said that he was aware that any further expansion would need another variance.

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

Mr. Warner discussed conditions of approval including granting a conservation easement for the wetlands and wetlands transition areas in the rear of the property.

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

application subject to the applicant granting a conservation easement, and the front and side porches remaining open porches.
Roll call:

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

Discussion – Supplemental Recommendation to the 2009 Annual Report concerning the creation of a Historic Preservation Advisory Committee
Board members discussed Mr. Schley's March 8, 2010 memo which identified the number of applications heard in 2009 which involved historically significant properties. Mr. Schley's draft recommended that the Township Committee appoint a historic preservation advisory committee to assist this Board in its deliberations.

Board members were in favor of sending this recommendation to the Township Committee

The motion was made by Mr. Miller and seconded by Mr. Schulenburg to adopt this supplemental recommendation to the 2009 Annual Report and send this recommendation to the Township Committee.
Roll call:

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

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

STEVEN STOWARZ
Case No. ZB09-013

RESOLUTION

WHEREAS, STEVEN STOWARZ (the "Applicant") has applied to the Zoning Board of Adjustment of the Township of Bernards (the "Board") for the following variances in connection with fencing and a gate that have already been installed around the perimeter of property identified as Block 11003, Lot 2 on the Official Tax Map, more commonly known as 340 Mountain Road:

(1) A variance for fences located in a front yard with as-built heights of approximately but not greater than 8 feet, and a gate with an as-built height of 6 feet, 4 inches, whereas the maximum permitted height for a fence located in a front yard is 4 feet, pursuant to Section 21-16.2(a) of the Land Development Ordinance; and

(2) A variance for fences located in a side/rear yard with as-built heights of approximately but not greater than 8 feet, whereas the maximum permitted height for a fence located in a side/rear yard is 6 feet, pursuant to Section 21-16.2(b) of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on April 7, 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 subject property is an approximately 3.25 acre lot fronting on Mountain Road, near the intersection of Deer Ridge Road.

3. The lot is presently developed with a one and one-half story, frame dwelling, an inground swimming pool, associated patios, a detached shed, a pool cabana and associated walkways and driveway.

4. The Applicant is seeking approval of the following fencing and gate, which have already been constructed:

> A. A 6'-4" height, ±14' wide driveway gate located ±30' from the front property line;
>
> B. An approximately but not greater than 8 foot high fence running ±220' along the front of the property. This fence is in two sections separated by the driveway gate, and is comprised of a 3'-11" high decorative metal fence with an attached mesh fabric extending to 7'-11" high; and
>
> C. An approximately but not greater than 8 foot high woven wire mesh fence running ±850' along the sides and rear of the property.

5. The Applicant submitted a one-page plan depicting the existing conditions, prepared by Titus Surveying & Engineering, P.C., dated April 28, 2009 and last revised May 4, 2009.

6. The subject lot is located in the R-1 (3 acre) residential zone. The fence height variances fall within the criteria of N.J.S.A. 40:55D-70(c).

7. By Memorandum dated June 15, 2009, the Environmental Commission noted that it had no environmental concerns at that time.

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

9. Steven Stowarz, the Applicant, residing at 340 Mountain Road, Basking Ridge, was duly sworn according to law. Mr. Stowarz testified that a portion of the subject fencing preexisted his purchase of the home and that approximately one and one-half years ago he installed the balance of the fencing in order to keep the deer population away from his home after he had contracted Lyme Disease from a deer tick bite. He testified that the bulk of the fencing is a dark mesh supported by dark colored/natural wood posts along the front and side-yard of the lot. He testified that the mesh fencing was almost transparent and barely visible from the street.

10. Mr. Stowarz introduced into evidence as Exhibit A-1, a small portion of the mesh fencing and distributed same to the Board Members for inspection. He also testified that the metal fencing in the rear-yard pre-existed his purchase of the home and that it was essentially imbedded in the woods.

11. Mr. Stowarz testified that he took the five photographs submitted with the application materials approximately two months ago and that they accurately depicted the present conditions at the subject premises, including the subject fencing. He also testified that he spoke with his neighbors and that no one objected to the fencing as installed. On questioning by a Board Member, Mr. Stowarz testified that as a result of the fencing the deer problem has been entirely eliminated.

12. The Applicant stipulated, as a condition of approval, that there shall be no changes to the construction materials and colors of the fencing and gate, and that same will be maintained in the same or similar condition as presently appears in the photographs submitted with the application materials, which are incorporated by reference herein.

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 5 to 0, finds that the Applicant has satisfied his burden of proving an entitlement to the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

15. The Board finds that the Applicant has satisfied his burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. 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 clarifies that the variance relief offered is not for any fencing up to, or at, the as-built heights, but rather only the same or substantially similar fencing as presently exists. Relatedly, the Board considers as a material factor the stipulation by the Applicant that there shall be no change to the construction materials and colors of the fencing and gate since, in the Board's opinion, the use of dark colored fence panels/mesh and dark colored/natural wood posts appear to be less visually obtrusive than other materials and colors.

16. 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 April 7, 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 7th day of April, 2010, that the application of Steven Stowarz 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 not change the construction materials and colors of the fencing and gate since, in the Board's opinion, the use of dark colored fence panels/mesh and dark colored/natural wood posts appear to be less visually intrusive than other materials and colors, and same shall be maintained in the same or substantially similar condition as presently appears in the photographs submitted with the application materials, which are incorporated by reference herein;

(3) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein, including, but not limited to, the requisite fence permit(s); and

(4) 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.

ROLL CALL VOTE:

Those in Favor: Miller, Plaza, Viola, Rhatican, Schulenburg

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 May 5, 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

JOHN AND SUSAN RAMAZZOTTO
Case No. ZB10-002

RESOLUTION

WHEREAS, JOHN AND SUSAN RAMAZZOTTO (the "Applicants") have applied to the Zoning Board of Adjustment of the Township of Bernards (the "Board") for the following bulk variance in connection with the removal of the existing one-story, single-family dwelling, and the construction of a new one-story, single-family dwelling on property identified as Block 602, Lot 9 on the Tax Map, more commonly known as 126 Fieldstone Drive:

> A variance for a pre-existing lot width of 153.1 feet, whereas the minimum required lot width in an R-4 (1 acre) residential zone is 200 feet pursuant to Section 21-15.1d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on April 7, 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 1.03 acre lot fronting on Fieldstone Drive. The parcel has an existing non-conforming lot width of 153.1 feet whereas 200 feet is required. The lot width previously complied with the Land

Development Ordinance, but in 1999 the lot width requirement increased from 150 feet to 200 feet.

3. The subject property is presently improved with a one-story, single-family dwelling. The Applicants propose to construct a new one-story dwelling which will replace the existing dwelling. The proposed dwelling will have an approximately 2,630 square foot footprint.

4. The Applicants' proposal is depicted on a Plot Plan prepared by Kurt Hoffman, P.E., dated November 6, 2009 and last revised January 25, 2010, consisting of one sheet. The Applicants also submitted architectural renderings prepared by Frank Bell, A.I.A., consisting of four sheets (Front, Right, Left and Rear Elevations), and a one-page floor plan, also prepared by Mr. Bell.

5. The property is located in the R-4 (1 acre) residential zone. The requested variance for the pre-existing lot width deviation falls within the criteria of N.J.S.A. 40:55D-70(c).

6. By Memorandum dated March 15, 2010, the Environmental Commission noted that it had no environmental concerns at that time.

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

8. John and Susan Ramazzotto, the Applicants, residing at 126 Fieldstone Drive, Basking Ridge, both were duly sworn according to law. Mr. Ramazzotto testified generally regarding the pre-existing single-family dwelling and the need to "start from scratch" and remove the existing dwelling and construct a new one. He testified that the approximately 153 foot lot width was conforming until 1999 when the Zoning Ordinance

increased the minimum lot width in the R-4 (1 acre) zone from 150 feet to 200 feet. On questioning, he also confirmed that the lots on either side of the Applicants' lot are deficient in width, such that there is no adjoining land that could be acquired by the Applicants in order to create a more conforming lot width without making an adjoining lot more nonconforming.

9. Mr. Ramazzotto testified that the existing three bedroom ranch has approximately 1,800 square feet whereas the proposed new three bedroom ranch would have approximately 2,600 square feet. He testified that the new dwelling would share approximately the same footprint as the existing dwelling, except that it will be approximately 6 to 7 feet deeper, however, the lot itself is approximately 300 feet deep.

10. Mrs. Ramazzotto testified that she took the photographs submitted with the application materials a couple of months ago and that they accurately depict the present condition of the premises and the subject dwelling.

11. The Applicants stipulated, as conditions of approval, to the following items as referenced in the corresponding comment in the Board Planner's Memorandum dated March 31, 2010:

Comment #	Comment
3	Amend the plot plan to include improvable lot area information (a minimum of 10,000 square feet is required and approximately 14,700 square feet is proposed) prior to the issuance of a building permit;
4	Provide soil erosion and sediment control measures in accordance with Section 21-42.1.f.2, subject to the further review and approval of the Township Engineer prior to the issuance of a building permit;
6	Make the site available to the Basking Ridge Fire Company in the event they wish to run drills on the site, with notice given to the Fire Company at least 30 days prior to the demolition date of the existing dwelling; and

Comment #	Comment
7	Pay the requisite development fees in accordance with Section 21-76.16 of the Land Development Ordinance.

12. Mr. Ramazzotto testified that it was his understanding that no existing trees would be removed as a result of the demolition of the existing dwelling and the construction of the new dwelling. Nevertheless, the Applicants stipulated, as a condition of approval, to agreeing to replace any and all trees removed as a result of the proposed development and, further stipulated to installing all new underground utility service and rerouting existing underground utility service so as to avoid disturbing any of the existing trees on the premises.

13. Jay Ignaut, 3457 Valley Road, Liberty Corner, questioned whether the Applicants intended to change the grade in the rear-yard as a result of the proposed development, in light of concerns regarding stormwater runoff. Mr. Ramazzotto testified that there was no intention to change the grade in the rear-yard.

14. Suzanne Uber, 62 Fieldstone Drive, Basking Ridge (Block 602, Lot 3), was duly sworn according to law and testified during the public comment period. Mrs. Uber testified regarding a history of stormwater runoff problems throughout and along Fieldstone Drive and expressed her concern with any change to the topography of the subject lot.

15. After reviewing the evidence submitted, the Board, by a vote of 4 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the pre-existing minimum lot width deviation under N.J.S.A. 40:55D-70(c)(1) and under N.J.S.A. 40:55D-70(c)(2).

16. With respect to the positive criteria for a "c(1)" or "hardship" variance, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the subject property. First, the Board recognizes that the subject lot is unusually narrow (approximately 150 foot width) and deep (approximately 300 foot depth), and has a pre-existing lot width deficiency. Second, the Board finds that the hardship that will be imposed upon the Applicants as the owners of the pre-existing undersized lot if the application were to be denied would not be a "self-created hardship." The evidence revealed that the property's lot width was rendered non-conforming by a zoning change in 1999, and neither the Applicants, nor any predecessor-in-title, created the non-conforming condition. See Commons v. Westwood Zoning Board of Adjustment, 81 N.J. 597, 606 (1980) (wherein the Supreme Court addressed the question of "self-created hardship" in the context of a request for a variance to permit the construction of a home on an undersized isolated lot). Third, the Board finds that the Applicants have established that no additional land is available for purchase which would bring the lot width into, or closer to, conformity with the district standards of the zoning ordinance. The evidence revealed that the majority of the lots on Fieldstone Drive, including the lots to either side of the Applicants' lot, are nonconforming in width. Thus, there is no adjoining land that could be acquired by the Applicants in order to create a more conforming lot width, without making an adjoining lot more nonconforming.

17. Next, the Board alternatively finds that the Applicants have satisfied the positive criteria for a "c(2)" or "flexible c" variance. The Board finds that proposed

development serves multiple purposes of the Municipal Land Use Law ("MLUL"), including providing a desirable visual environment, enhancing the visual compatibility of the property with adjoining properties, and otherwise promoting the general welfare. The Board also finds that the benefits to be derived by the proposed development will substantially outweigh the detriments associated therewith. The new dwelling essentially will be located on the same footprint as the existing dwelling and the lot and the proposed dwelling are otherwise conforming. Moreover, the Board recognized that the proposed new dwelling would be modest in size and not visually intrusive from the streetscape.

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

WHEREAS, the Board took action on this application at its meeting on April 7, 2010, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-l0(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of April, 2010, that the application of John and Susan Ramazzotto, 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 amend the plot plan to include improvable lot area information (a minimum of 10,000 square feet is required and approximately 14,700 square feet is proposed) prior to the issuance of a building permit;

(3) The Applicants shall provide soil erosion and sediment control measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance subject to the further review and approval of the Township Engineer prior to the issuance of a building permit;

(4) The Applicants shall install all new underground utility service and reroute existing underground utility service so as to avoid disturbing any of the existing trees on the premises;

(5) The Applicants shall make the site available to the Basking Ridge Fire Company in the event they wish to run drills on the site, with notice given to the Fire Company at least 30 days prior to the demolition date of the existing dwelling;

(6) The Applicants shall pay the requisite development fees in accordance with Section 21-76.16 of the Land Development Ordinance;

(7) Any change to the grade of the property in the rear-yard area as a result of either the demolition of the existing dwelling or the construction of the proposed new dwelling shall be subject to review and approval of the Township Engineer to minimize any negative impacts due to stormwater runoff;

(8) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;

(9) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and

(10) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance 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, Viola, Schulenburg

Those Opposed:

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 May 5, 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

SHAKIL AHMED
Case No. ZB10-006

RESOLUTION

WHEREAS, SHAKIL AHMED (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 a one-story kitchen expansion consisting of two additions of 2 feet by 5 feet and 2 feet by 8 feet (total 275 square feet) to the rear of the existing dwelling on property identified as Block 2502, Lot 11 on the Tax Map, more commonly known as 42 Flintlock Court:

> A variance for a proposed rear-yard setback of approximately 44 feet, whereas the existing rear-yard setback is 31 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

WHEREAS, a public hearing on notice was held on such application on April 7, 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 subject property is an approximately 40,312 square foot (0.93 acre) slightly undersized, corner lot located at the intersection of Flintlock Court and Kinnan Way.

3. The subject property is presently improved with a two-story frame dwelling (4 bedroom colonial), with a 12 foot by 7 foot (84 square foot) shed located to the rear of the dwelling. The Applicant proposes to construct two additions, approximately 10 square feet and 16 square feet, respectively, to the rear of the existing dwelling. The proposed additions will extend the current overhang/bay window in the kitchen to the rear of the dwelling by 8 feet on one side and 5 feet on the other side.

4. The Applicant's proposal is depicted on a Plan of Survey prepared by Alfred R. Coco, P.E., L.S., of Central Layouts, Inc., dated May 12, 2009, and architectural drawings prepared by Ali Qureshi, Architect, dated February 25, 2010, same consisting of one sheet.

5. The property has pre-existing nonconformities. The area of the lot is 40,312 square feet (0.93 acre), rather than the minimum required 43,560 square feet (1 acre). The lot width along Kinnan Way of approximately 150.02 feet is deficient since a minimum of 200 feet is required. The distance between the dwelling and the shed in the rear-yard is deficient since it is only approximately 7 feet, whereas a minimum of 10 feet is required. None of the aforementioned nonconformities will change or be affected by the proposed development.

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

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

8. Shakil Ahmed, the Applicant, residing at 42 Flintlock Court, Basking Ridge, was duly sworn according to law.

9. Mr. Ahmed explained generally the proposed kitchen expansion and the need for rear-yard setback variance relief. He testified he took the photographs submitted with the Application materials approximately three weeks ago and that they accurately depict the present condition of the premises and the subject dwelling. Mr. Ahmed further testified that he spoke with his neighbors and that they were amenable to his proposal.

10. Mr. Ahmed further testified that the proposed small additions would line up with the existing bay window/overhang and result in a more aesthetically pleasing design to the rear of the existing dwelling. The Applicant stipulated, as a condition of approval, to utilizing the same materials and colors for the kitchen addition so as to match the existing dwelling and maintain a uniform exterior of the dwelling.

11. The Board Planner confirmed that the existing rear-yard setback is measured to the rear deck, such that the existing rear-yard setback is only 31 feet and the rear-yard setback of 44 feet to the kitchen addition actually is less of a nonconformity than presently exists.

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

13. After reviewing the evidence submitted, the Board, by a vote of 5 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).

14. As to the positive criteria under the "(c)(1)" or "hardship" analysis, the Board finds that the Applicant has satisfied his burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, him as the owner of the subject property. Specifically, the Applicant's lot is a corner lot and it contains no building envelope. The lot is 150 feet deep at Flintlock Court and the required front and rear-yard setbacks are 75 feet each, such that a conforming addition is not possible. Moreover, the evidence revealed that these hardships were not created by the Applicant or any predecessor-in-title.

15. 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 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.

16. The Board finds that the resultant zoning deviation is modest relative to the benefits to be derived from the proposed development. First, while a variance is required to extend by 13 feet the pre-existing nonconforming rear-yard setback of 44 feet, the proposed development will not actually reduce the rear-yard setback, and it is less of a nonconformity then the existing 31 foot rear-yard setback measured to the deck to the rear of the dwelling. Second, the Board recognizes the further benefit of the Applicant maintaining a uniform exterior condition of the existing dwelling.

15. Finally, the Board finds that the Applicant has satisfied the negative criteria. The Applicant 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 April 7, 2010, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-l0(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of April, 2010, that the application of SHAKIL AHMED 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 utilize the same materials and colors for the addition so as to match the existing dwelling and maintain a uniform exterior of the dwelling;

(3) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;

(4) The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules, regulations affecting development in the Township, County and State; and

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

ROLL CALL VOTE:

Those in Favor: Miller, Plaza, Viola, Rhatican, Schulenburg

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of Bernards at its meeting on May 5, 2010 as copied from the Minutes of said meeting.

_____
_____
FRANCES FLORIO, Secretary
ZONING BOARD OF

ADJUSTMENT

OF THE TOWNSHIP OF
BERNARDS, COUNTY OF
SOMERSET,
STATE OF NEW JERSEY

Dated: _____, 2010