

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

Minutes v3 **Re-organization & Regular Meeting** January 5, 2022

Ms. Kiefer called the meeting to order at 7:36 PM.

FLAG SALUTE

OPEN MEETING STATEMENT

Ms. Kiefer read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this regular and reorganization 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 mailed to the Bernardsville News, Whippany, New Jersey; the Courier News, Bridgewater, New Jersey; and was filed with the Township Clerk all on October 5, 2021 and was mailed electronically to all those people who have requested individual notice."

OATHS OF OFFICE

Counselor Warner swore in the following members:

- Joe Pavlosky, Regular Member, filling unexpired four-year term (Breslin) expiring 12/31/2023
- Karl Kraus, Regular Member, four-year term expiring 12/31/25
- Francis Helverson, Alternate #1, filling unexpired two-year term (Pavlosky) expiring 12/31/2022
- Nimish Amin, Alternate #2, two-year term, expiring 12/31/23

Continuing Members: Baumann, Cambria, Genirs, Pochtar, Tancredi

ROLL CALL:

Members Present:	Amin, Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent:	Baumann
Also Present:	Steven K. Warner, Esq., Township Planner, David Schley, PP/AICP; Cyndi Kiefer

On motion by Ms. Pochtar, seconded by Ms. Genirs, all eligible in favor and carried, the absence of Ms. Baumann was excused.

REORGANIZATION MEETING

NOMINATIONS FOR CHAIRMAN OF THE BOARD

On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, Ms. Genirs was elected Chairwoman for 2022.

NOMINATIONS FOR VICE CHAIRMAN OF THE BOARD

On motion by Chairwoman Genirs, seconded by Mr. Kraus, all eligible in favor and carried, Mr. Tancredi was elected Vice Chairman for 2022.

NOMINATIONS FOR VICE CHAIRMAN PRO TEMP OF THE BOARD

On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, Ms. Pochtar was elected Vice Chairwoman Pro Temp for 2022.

APPOINTMENT OF BOARD ENGINEER- Resolution #20-02

Moved by Mr. Tancredi and seconded by Ms. Pochtar, that Thomas J. Quinn, PE, CME, with the firm of *EKA Associates, PA*, be appointed to the position of Engineer for the Board for 2022.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin

Motion carried.

APPOINTMENT OF BOARD PLANNER

On motion by Mr. Tancredi, seconded by Ms. Pochtar, all eligible in favor and carried, David Schley, PP, AICP, was appointed to the position of Board Planner for 2022.

APPOINTMENT OF BOARD SECRETARY

On motion by Mr. Tancredi, seconded by Ms. Pochtar, all eligible in favor and carried, Cyndi Kiefer was appointed to the position of Board Secretary for 2022.

APPOINTMENT OF BOARD ATTORNEY - Resolution #22-01

Moved by Mr. Tancredi and seconded by Mr. Kraus, that Steven K. Warner, Esq. with the firm of *Ventura, Miesowicz, Keough& Warner PC* be appointed to the position of Attorney for the Board for 2022.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin

Motion carried.

ADOPTION OF 2022 RULES AND REGULATIONS OF THE BOARD - Resolution #22-03

Moved by Mr. Kraus and seconded by Mr. Tancredi, that the 2022 Rules and Regulations of the Board be adopted as written.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin

Motion carried.

ADOPTION OF THE SCHEDULE OF MEETING DATES - Resolution #22-04

Moved by Ms. Pochtar and seconded by Mr. Tancredi, that the Schedule of Meetings for the Year 2022 be adopted as amended (January 12, 2023 was added).

Roll Call Vote:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin

Motion carried.

ADOPTION OF OFFICIAL NEWSPAPERS

On motion by Mr. Kraus, seconded by Ms. Pochtar, the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, were designated as the official newspapers for 2022. The Daily Record of Morristown, NJ, and the Star Ledger of Newark, NJ were designated as newspapers which may be given notice by the Board Secretary when the publication schedule of the Bernardsville News or Courier News does not enable it to publish advance notice of special, rescheduled, or emergency meetings. All eligible in favor and carried, the Bernardsville News and the Courier News were designated as official newspapers for 2022.

ADOPTION OF POLICY OF ADEQUATE NOTICE - Resolution #22-05

Moved by Mr. Tancredi and seconded by Mr. Kraus, that the Policy of Adequate Notice be adopted as written.

Roll Call Vote:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin

Motion carried.

ADJOURNMENT OF THE REORGANIZATION PORTION OF THE MEETING

On motion by Mr. Tancredi, seconded by Ms. Pochtar, all in favor and carried, the reorganization portion of the meeting was closed at 7:47 PM.

REGULAR MEETING**APPROVAL OF MINUTES**

December 8, 2021 – Regular Session - On motion by Ms. Pochtar, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF RESOLUTIONS

Ahmed, Faizan/Faizan, A.; Block 2301, Lot 5; 62 Wisteria Way; ZB21-030 (approved) - Mr. Tancredi moved approval of the resolution as drafted. Mr. Pavlosky seconded.

Roll call:	Aye:	Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin, Helverson

Motion carried.

COMPLETENESS HEARING

B3 Church Street LLC; Block 7501, Lot 15; 15 Church Street; Preliminary/Final Site Plan; "d(1)" Use Variance; ZB21-036

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

Frederick B. Zelley, Esq., attorney with the firm of *Bisogno, Loeffler & Zelley LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant. He stated that the proposed project, interior renovation of the second floor of an existing building from business use to two apartments, requires a "d-1" or "Use Variance." Also, four (4) existing parking area light poles are to be replaced with pole-mounted LED fixtures. Referring to Mr. Schley's memo dated 12/27/2021, Mr. Zelley advised that no changes are proposed for the parking lot and that the plans will be revised to address the inconsistencies noted in the memo. Finally, he requested a waiver for submission of a project report/environmental impact assessment since the scope of the project is primarily interior. Mr. Warner added that the Board could ask for that document if it is deemed necessary any time during the hearing or as a condition of approval. Finally, Mr. Zelley agreed to supply a letter prior to the public hearing, stating that there would be no changes made to the parking lot, and that the plans would be revised as a condition of approval.

Ms. Pochtar moved to grant the checklist submission waiver as requested and to deem the application complete. Mr. Tancredi seconded.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE
	Ineligible:	Amin

Motion carried.

Chairwoman Genirs advised that the order of public hearings on the agenda had been revised and that Application #ZB21-032 (Wang/Chang) would be heard first.

COMPLETENESS AND PUBLIC HEARING

Chang, G./Wang, H.; Block 4301, Lot 25; 40 Ridgeview Drive; Bulk Variance; ZB21-032

Present: Catherine Mueller, PE, CME, Engineer for the Applicants
Hong Wang, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Ms. Wang, Ms. Mueller and Mr. Schley were duly sworn.

Catherine Mueller, PE, CME, engineer with the firm of *Page-Mueller Engineering Consultants PC*, Warren, NJ, was accepted by the Board as an expert in the field of civil engineering. Ms. Mueller testified that the proposed

project, installation of an in-ground pool within an existing patio, requires relief because the proposed location of the pool is not behind the rear building line of the adjacent dwelling on Lot 26 (36 Ridgeview Drive). She explained that because of the curve in Ridgeview Drive, the only conforming location would be in the rear corner of the lot, approximately 100 feet from the Applicant's house, adding that not only would it require more grading but that the situation would be further complicated by the location of an existing septic field. Ms. Mueller stated that the proposed location for the pool would not increase the existing side yard nonconformity and represents a much safer situation for the Applicants' children. She addressed the comments in Mr. Schley's memo dated 12/29/2022 and Mr. Quinn's memo dated 01/03/2022 to the satisfaction of the Board and agreed to prepare the necessary documents for the conservation easement (wetlands).

Hong Wang, Applicant residing at 40 Ridgeview Drive, testified that she had spoken to the owners of Lot 26 and that they had no concerns about the proposal. Adding that there is existing shrubbery between her property and Lot 26, she stated that none of the existing trees or ornamental landscaping would be removed. She testified that she had taken the photos submitted with the application and that they accurately depict the property as it currently exists. She also testified that the only lighting would be inside the pool and stipulated, as a condition of approval that additional screening, if required, would fall under the purview of the Engineering Department.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed. No summation was offered.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for both a c(1)" or "hardship" variance and a "c(2)" or "benefits outweigh detriments" variance. Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the application for variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

Roll call:

Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
Nay:	NONE
Abstain:	Amin

Motion carried.

Mr. Helverson recused himself from participating in the following hearing and left the dais.

COMPLETENESS AND PUBLIC HEARING

Porr, Michael and Wendy; Block 1611, Lot 48; 10 Prospect Avenue; Bulk Variance; ZB21-033

Present: Frederick B. Zelle, Esq., Attorney for the Applicants
Michael and Wendy Porr, Applicants

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He explained that the proposed project, installation of an in-ground pool and pool equipment, had been the subject of a previous application which was heard by this Board several months ago. The Board denied the pool-specific variances but conditionally granted setback relief for an existing shed. Mr. Zelle stated that in response to concerns voiced by the Board during that hearing, the size of the pool had been reduced and the decking, which was to surround the pool, was eliminated. In addition, a portion of the existing driveway would be removed. He noted that when the Applicants purchased the property, which is undersized for the zone, the existing lot coverage already exceeded the maximum allowable and although relief for coverage is still required, with this proposal the lot coverage would actually be reduced by just under 100 sq. ft. compared to the prior proposal.

Mr. Warner opined that the current application is sufficiently different from the previous application, hence the doctrine of *res judicata*, which prevents the same parties from seeking essentially the same relief in the same factual setting, did not apply and the Board could proceed. He stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Porr, Mrs. Porr and Mr. Schley were duly sworn.

Responding to Mr. Warner, Mr. Zelley voiced no objection to Mr. Helverson sitting in the audience.

Michael Porr, Applicant residing at 10 Prospect Avenue, advised the Board that he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists. He also noted that he had spoken to the adjacent neighbors and all of them supported the project. Finally, he stated that he did not intend to relocate the shed.

All of the comments in Mr. Schley's memo dated 12/29/2021, Mr. Quinn's memo dated 01/03/2022 and the Environmental Commission's memo dated 09/28/2021 were addressed to the satisfaction of the Board.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments.

Harold Slapin, 18 Prospect Avenue, was duly sworn and spoke in support of the application.

Mr. Zelley provided a summary, opining that the relief requested (lot coverage and setbacks for the existing shed and proposed pool equipment) qualified as both c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variances.

A discussion ensued concerning the excessive lot coverage and the consensus of the Board was that a further reduction in the size of the driveway from what is being proposed is unnecessary. After hearing testimony from Mr. Porr that there had been no complaints from adjacent property owners about water drainage from his property, the Board felt that stormwater management measures such as drywells should not be required.

Hearing no further questions or comments from the Board or its professionals, the hearing was opened to the public for questions or comments.

Mr. Slapin stated that he had lived in the neighborhood for over 35 years and that even though his property is slightly downhill from the subject property, he had never experienced any unusual drainage issues.

Hearing no further questions or comments from the public, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(2)" or "benefits outweigh detriments" variances. Mr. Cambria moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the application for variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Chairwoman Genirs seconded.

Roll call:

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

Motion carried.

Mr. Helverson returned to the dais.

COMMENTS FROM MEMBERS OR STAFF

The Board welcomed the new members. Chairwoman Genirs cancelled the 01/13/2022 special meeting.

ADJOURN

Moved by Mr. Tancredi, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 9:45 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as written 02/09/2022

01/25/2022dsswaw



Resolution of the Township of Bernards Zoning Board of Adjustment

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #22-01

Professional Services Contract for 2022 Board of Adjustment Attorney
Awarded to Steven K. Warner, Esq. of the firm Ventura, Miesowitz, Keough & Warner PC
In the Not to Exceed Amount of \$ 20,000.00, including matters of litigation.
(Excluding Matters funded by Escrow)

BE IT RESOLVED, by the Bernards Township Zoning Board of Adjustment (herein "Board"), Somerset County, New Jersey, as follows:

WHEREAS, the Bernards Township Zoning Board of Adjustment wishes to engage the services of an attorney to perform legal services as required for the year 2022, which is a "professional service" as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, this contract was awarded without public advertisement as defined in N.J.S.A. 19:44A-20-7 and pursuant to the provisions of N.J.S.A. 19:44A-20-4; and

WHEREAS, Bernards Township Zoning Board of Adjustment has special confidence in Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner PC by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2022 Current Fund Budget, Board of Adjustment; Other Expenses-Fees and Compensation account #2-01-21-185-204 (\$2,500.00) and Board of Adjustment-Litigation Fees and Compensation account # 2-01-21-185-20A (\$17,500.00) for a total not to exceed amount of \$ 20,000.00.

NOW BE IT RESOLVED by the Township of Bernards Zoning Board of Adjustment that a professional service contract be awarded to Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner PC as follows:

1. The contract will encompass services as outlined in the submitted contract proposal dated November 11, 2021, appended to this resolution.
2. The contract term is from January 1, 2022 through December 31, 2022 at the hourly rate of \$195.00 at a not to exceed amount of \$20,000.00 plus escrow funds paid by applicant in accordance with Bernards Township Ordinance No.1018.
3. The line item appropriation for professional legal services of \$2,500.00 shall be charged to line account #2-01-21-185-204. The line item appropriation for matters of litigation of \$17,500.00 shall be charged line account #2-01-21-185-20A.
4. Billings must be rendered by the contractor within 30 days of service delivery
5. Any modification to this contract shall be in writing and signed by both parties and upon obtaining said signatures shall immediately become part of the contract.
6. No payments in excess of the "not to exceed" contract amounts will be approved, unless such services/expenditures are negotiated and agreed upon in advance of service delivery.

7. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to PL 1975, c127, which is attached to this resolution as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Bernards Township Zoning Board of Adjustment engage Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner as its legal counsel for the year 2022, with Steven K. Warner, Esq., of that firm designated as the individual specifically authorized to act in the Board's behalf and, in his absence any other attorney in that firm as he may designate.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Steven K. Warner, Esq., of the firm Ventura, Miesowitz, Keough & Warner PC, which contract [*appended to this resolution*] shall be available for inspection at the Bernards Township Zoning Board of Adjustment Offices during regular business hours.

NOW THEREFORE BE IT FINALLY RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution.


I agree to the terms as stated in this Resolution and by signing this document, I am committed to follow all terms of this award.



Steven K. Warner, Esq.

CFO CERTIFICATION


I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for this contract. The line item appropriations to be charged are Board of Adjustment Other Expenses, for Professional Legal Services, account Fees and Compensation #2-01-21-185-204 in the not to exceed amount of \$2,500.00 and the line item appropriation to be charged for Litigation Services is account #2-01-21-185-20A in the not to exceed amount of \$17,500.00.


Sean McCarthy, Chief Financial Officer

Date: December 17, 2021

PURCHASING CERTIFICATION


I hereby certify that I have reviewed this resolution for accuracy.


Francis J. Decibus, QPA
Purchasing Agent

Date: December 8, 2021

Dated:

ATTEST:

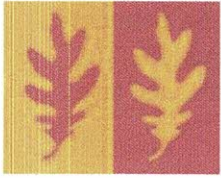


Cyndi Kiefer, Board Secretary

ADOPTED:



Jeanmarie Genirs, Chairwoman



Resolution of the Township of Bernards Zoning Board of Adjustment

277 S. Maple Ave
908-204-3026; www.bernards.org

Resolution #22-02

Professional Services Contract for 2022 Board of Adjustment Engineer
Awarded to Thomas J. Quinn, PE, CME, NJ License #24GE04107200 of the firm EKA Associates, PA
In the Not to Exceed Amount of \$ 5,000 for Engineering Services and
In the Not to Exceed Amount of \$5,000.00
(Excluding Charges covered by Escrow Funds)

BE IT RESOLVED, by the Bernards Township Zoning Board of Adjustment (herein "Board"), Somerset County, New Jersey, as follows:

WHEREAS, the Bernards Township Zoning Board of Adjustment wishes to engage the services of an engineer to perform engineering services as required for the year 2022, which is a "professional service" as defined by N.J.S.A. 40A:11-2(6), and which is permitted by N.J.S.A. 40A:11-5(1)(a) to be contracted for without public bidding; and

WHEREAS, Bernards Township Zoning Board of Adjustment has special confidence in Thomas J. Quinn, PE, CME, NJ License #24GE04107200 of the firm EKA Associates, PA by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm; and

WHEREAS, the Chief Financial Officer has certified that funds will be made available in the 2022 Current Professional Engineering Services of the Planning Board Other Expenses, account #2-01-21-185-204 for a not to exceed amount of \$5,000.00.

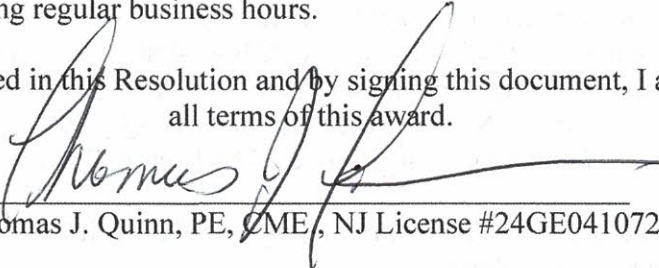
NOW BE IT RESOLVED by the Township of Bernards Zoning Board of Adjustment that a professional service contract be awarded to Thomas J. Quinn, PE, CME NJ License #24GE04107200 of the firm EKA Associates, PA as follows:

1. The contract will encompass services as outlined in the submitted contract proposal dated November 24, 2021, appended to this resolution.
2. The contract term is from January 1, 2022 through December 31, 2022 at the hourly rate of \$140.00 at a not to exceed amount of \$5,000.00 plus escrow funds paid by applicant in accordance with Bernards Township Ordinance No.1018.
3. The line item appropriation for professional engineering services of \$5,000.00 shall be charged to line account #2-01-21-185-204.
4. Billings must be rendered by the contractor within 30 days of service delivery
5. Any modification to this contract shall be in writing and signed by both parties and upon obtaining said signatures shall immediately become part of the contract.
6. No payments in excess of the "not to exceed" contract amounts will be approved, unless such services/expenditures are negotiated and agreed upon in advance of service delivery.
7. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to PL 1975, c127, which is attached to this resolution as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the Bernards Township Zoning Board of Adjustment engage Thomas J. Quinn, PE, CME NJ License #24GE04107200 of the firm EKA Associates, PA designated as the individual specifically authorized to act in the Board's behalf and in his absence any other Engineer in that firm as he may designate.


NOW THEREFORE BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Thomas J. Quinn, PE, CME, of the firm EKA Associates, PA, which contract [appended to this resolution] shall be available for inspection at the Bernards Township Zoning Board of Adjustment Offices during regular business hours.

I agree to the terms as stated in this Resolution and by signing this document, I am committed to follow all terms of this award.


Thomas J. Quinn, PE, CME, NJ License #24GE04107200

CFO CERTIFICATION

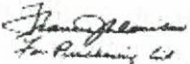
I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for this contract. The line item appropriations to be charged are Board of Adjustment Fees and Compensation line account #2-01-21-185-204 in the not to exceed amount of \$5,000.00.


Sean McCarthy, Chief Financial Officer

Date: December 17, 2021

PURCHASING CERTIFICATION

I hereby certify that I have reviewed this resolution for accuracy.


Francis J. Decibus, QPA
Purchasing Agent

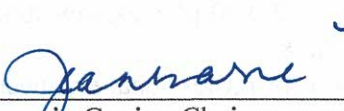
Date: December 8, 2021

Dated: 1/19/22

ATTEST:


Cyndi Kiefer, Board Secretary

ADOPTED:


Jeanmarie Genirs, Chairwoman

**TOWNSHIP OF BERNARDS
COUNTY OF SOMERSET
STATE OF NEW JERSEY
RULES AND REGULATIONS FOR THE YEAR 2022
ZONING BOARD OF ADJUSTMENT
RESOLUTION #22-03**

WHEREAS, N.J.S.A. 40:55D-8(a) requires each municipal agency to adopt reasonable rules and regulations for the administration of its functions, powers and duties; and

WHEREAS, N.J.S.A. 40:55D-8(a) further requires that the municipal agency furnish a copy of the adopted rules and regulations to any person upon request; and

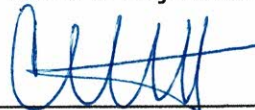
WHEREAS, N.J.S.A. 40:55D-8(a) further requires that the municipal agency's rules and regulations thereto be maintained in the office of the administrative officer;

THEREFORE, BE IT RESOLVED, that the attached Rules and Regulations for the Zoning Board of Adjustment of the Township of Bernards be and the same are hereby adopted; and

BE IT FURTHER RESOLVED that copies of this resolution and copies of the attached said Rules and Regulations be maintained in the office of the Secretary of the Zoning Board of Adjustment and the Clerk of the Township of Bernards.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar
	Nay:	NONE

I, Cyndi Kiefer, Secretary to the Zoning Board of Adjustment of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Zoning Board of Adjustment on January 5, 2022.



CYNDI KIEFER, Board Secretary

Dated: January 5, 2022

**TOWNSHIP OF BERNARDS
COUNTY OF SOMERSET
STATE OF NEW JERSEY
SCHEDULE OF MEETINGS FOR THE YEAR 2022
ZONING BOARD OF ADJUSTMENT
RESOLUTION #22-04**

PLEASE TAKE NOTICE that the Zoning Board of Adjustment of the Township of Bernards will meet to discuss or act upon public business at 7:30 PM on each of the dates in the year 2022 as set forth below, at the Municipal Building, Collyer Lane, Basking Ridge, New Jersey:

Regular Meetings:

February 9	August 3
March 9	September 7
April 6	October 5
May 4	November 9
June 8	December 7
July 6	

Special Meetings:

January 13	June 16
February 17	September 15
March 17	October 13
April 14	November 17
May 12	

*January 4, 2023 – Reorganization Meeting
January 12, 2023 – Special Meeting*

Notice of any revisions to the above schedule will be posted and advertised as required by law.

Formal action may be taken at all regular and special meetings.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
	Nay:	NONE

I, Cyndi Kiefer, Secretary to the Zoning Board of Adjustment of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Zoning Board of Adjustment on January 5, 2022.



CYNDI KIEFER, Board Secretary

January 5, 2022

**TOWNSHIP OF BERNARDS
COUNTY OF SOMERSET
STATE OF NEW JERSEY
ZONING BOARD OF ADJUSTMENT
RESOLUTION #22-05
POLICY OF ADEQUATE NOTICE**

WHEREAS, the Open Public Meeting Act, Chapter 231 of the Public laws of the State of New Jersey requires that henceforth no Public Body shall hold a meeting unless adequate notice thereof has been provided to the public in the manner and under the circumstances therein set forth;

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards that adequate notice, as defined in said Act, be:

1. Posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge;
2. Mailed, telephoned, electronic or hand delivered to the Bernardsville News, Whippany, NJ and the Courier News, Bridgewater, NJ being designated as the official newspapers of the Township;
3. Filed with the Township Clerk;
4. Mailed to any person who has so requested such notice for the forthcoming year via electronic mail;

BE IT FURTHER RESOLVED, that the foregoing notice be posted, mailed and submitted in accordance with said Act.

Roll call:	Aye:	Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar
	Nay:	NONE

I, Cyndi Kiefer, Secretary to the Zoning Board of Adjustment of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Planning Board on January 5, 2022.



CYNDI KIEFER, Board Secretary

January 5, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**ANILA FAIZAN and FAIZAN AHMED
Case No. ZB21-030**

RESOLUTION

WHEREAS, ANILA FAIZAN and FAIZAN AHMED (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of a single family dwelling with a four-car garage, and the modification/expansion of the existing driveway to access the new garage, on property identified as Block 2301, Lot 5, on the Official Tax Map of the Township of Bernards, more commonly known as 62 Wisteria Way (the “Property”):

A variance for a proposed disturbance of 100% of slopes ranging from 20 to 25%, whereas the maximum amount of disturbance of slopes ranging from 20 to 25% is 20%, pursuant to Section 21-14.2.b.2(b) of the Township’s Land Development Ordinance (the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on December 8, 2021, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicants and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions;

1. The Board reviewed the application and deemed it to be complete.
2. The Property is approximately 3.17 acres, located in the R-1 (3 acre) residential zone. The Property is located on Wisteria Way and is presently undeveloped, aside from a driveway, emergency access road and a pool, as the previously existing dwelling has been removed.

3. The Applicants propose to construct a new dwelling with 6,586 square feet of floor area, including a four-car attached garage. The Applicants also propose to keep the presently existing swimming pool and access road and driveway.

4. The Applicants' proposal is depicted on plans titled "Plot & Grading Plan", dated August 25, 2021, same consisting of 2 sheets; "Steep Slope Map," dated August 25, 2021, same consisting of one sheet; and, "Topography Survey Plan," dated May 26, 2021, same consisting of one sheet, all of which was prepared by Andrew K. Wu, P.E., P.L.S., of Formosa Engineering, Inc., with a business address of 168 U.S. Route 1, Edison, New Jersey.

5. David Schley, P.P., A.I.C.P, the Township/Board Planner, and Thomas J. Quinn, P.E., C.M.E., the Board Engineer, were duly sworn according to law.

6. Faizan Ahmed and Anila Faizan, the Applicants, were duly sworn according to law and testified on their own behalf as fact witnesses. Mr. Faizan testified that he is a director of IT and his wife, Anila, is a doctor.

7. Mr. Faizan testified that the Property is approximately three acres in lot area, and once contained an old house built in 1937, which faced the north side of the lot.

8. Mr. Faizan testified that he and his wife spoke with neighbors and they are excited for the Applicants to move in and build a house that fits in with the neighborhood.

9. Mr. Faizan testified that there is an easement that runs through the middle of the Property, encompassing the emergency access drive across the site, which creates a hardship for the Applicants. He also stated that the proposed dwelling would be similar in size to the previous dwelling, but now it will face the street rather than sideways.

10. Mr. Quinn testified that he and Mr. Schley previously discussed and came to the conclusion that there is no proposed disturbance of slopes greater than 25%, as the Township

measures steep slopes based on 10-foot contour intervals. He testified that there is some disturbance in the 20-25% steep slope category, but it is difficult to tell whether it crosses the threshold of 20%.

11. Mr. Schley concurred, testifying that the allowable disturbance of steep slopes depends on the “entirety of the Property.” He testified that the total area of steep slopes in the 20-25% slope category must be identified, and 20% of that total area can be disturbed without requiring a variance.

12. After further review, Mr. Schley concluded that there is approximately 5,000 square feet of land in the 20-25% slope category, all of which is within the proposed limit of disturbance, such that a variance is required to permit disturbance of 100% of the land in the 20-25% slope category.

13. With regard to the height of the proposed dwelling, Mr. Schley testified that it appears the proposal would comply with the Ordinance’s height maximum, however, a more detailed calculation will have to be provided for review and approval by the Township Zoning Officer before a construction permit will be issued.

14. Andrew Wu, P.E., P.L.S., of Formosa Engineering, Inc., with a business address of 168 US Highway 1, Edison, was duly sworn according to law, presented his credentials and was accepted by the Board as a professional in the field of civil engineering.

15. As to comment 4a of Mr. Schley’s November 24, 2021 Review Memorandum to the Board, Mr. Wu testified that “no,” there will not be drainage issues from the proposed development. Mr. Wu testified that he followed the natural contour lines of the Property, and that water will flow toward the natural low point. He stated that the Property is a “big lot” and that all of the stormwater runoff will not go toward neighboring properties, there will not be any adverse

impact from the proposal, water flow from the driveway will be caught by the proposed drainage system (which will contain two drywells), and that there will be no increase in either the rate or volume of the stormwater runoff.

16. Finally, Mr. Wu testified that the roads and the driveway were designed to follow the natural topography of the Property, so as to minimize the disturbance of steep slopes.

17. Mr. Schley advised the Board that a majority of the driveway is an existing condition that will remain, such that it is not disturbing any steep slopes.

18. Mr. Quinn testified that the proposal is “earthwork intensive” and will require approval from the Somerset-Union Soil Conservation District. He further testified that he would recommend a “double barrier” along the south and east sides of the Property, which is where the water would naturally want to flow. Mr. Quinn opined that the Soil Conservation District will handle any soil runoff, but double measures, such as haybales and a silt fence, are advisable.

19. Mr. Wu confirmed that the Applicants will comply with all of the questions and comments in Mr. Quinn’s Review Memo.

20. With regard to Mr. Schley’s review memorandum, Mr. Wu confirmed that the Applicants will stipulate to paragraphs 5, 8-10, 13-17, and 20-21.

21. With regard to paragraph 7 of Mr. Schley’s review memorandum, Mr. Wu testified that the Applicants would like to keep the proposal under one acre of disturbance, but that it does not seem possible, as the Applicants likely will want to replace the driveway and land disturbance is cumulative. As such, Mr. Wu testified that, while there is a significant amount of disturbance proposed, there still is a significant amount of disturbance available before any proposal will constitute a “major development.” In response to same, Mr. Quinn testified that, if the Applicants exceed one (1) acre of disturbance, they will have to increase stormwater management measures,

as the Applicants are only currently dealing with stormwater quantity, but not quality, and that these additional measures likely would require an additional drywell with further land disturbance.

22. With regard to paragraph 11 of Mr. Schley's review memorandum, Mr. Wu stipulated that the tree replacement requirements apply to this application and will be complied with by the Applicants.

23. With regard to paragraph 12 of Mr. Schley's review memorandum, Mr. Wu stipulated that the septic field will be screened.

24. With regard to paragraph 18 of Mr. Schley's review memorandum, Mr. Wu confirmed that the prior conditions of approval from the previously approved subdivision still apply to the Property and this application.

25. With regard to paragraph 19 of Mr. Schley's review memorandum, Mr. Wu testified that the existing easement on the Property was put in place to address a prior Township ordinance, which is no longer applicable due to Residential Site Improvement Standards (RSIS), and Wisteria Way being longer than 1,000 feet.

26. In response to questions from the Board, Mr. Wu confirmed that it is better to have a dwelling face the street, like all of the other dwellings on the street, rather than have it configured sideways on the lot.

27. In response to the Review Memo prepared by the Environmental Commission, Mr. Wu testified that native hardwood plant species will be used.

28. Mr. Wu testified as to the four photographs previously submitted to the Board, which he testified that he took in approximately October 2021, and all the pictures accurately depict what presently exists. Mr. Wu testified that the first photograph is of the entrance to the Property and the easement that is presently being used. He testified that the second photograph is

of the hole where the former house was previously located. He testified that the third photograph depicts the location where he was standing when he took the second photograph, and it depicts part of the existing driveway. He testified that the final photograph came from Google Maps, and it depicts the Property facing the neighbor's pool, which is why the Applicants want to re-orient the dwelling to face the street.

29. In response to further questions from the Board, Mr. Wu testified that the Applicants plan to retain the pool, and it will not be open to the public.

30. No members of the public commented on, or objected to, the application.

DECISION

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

Subsection c(1) – Positive Criteria:

32. As to the positive criteria for the subsection “c(1)” or “hardship” variance for the steep slope disturbance, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants as the owners of the Property.

33. The proposed dwelling is to be located in or about the center of the Property. To comply with the Township Ordinance's steep slope requirements, the Board recognizes that the proposed dwelling would have to be located in an area that would result in setback deviations and/or impede the existing emergency access easement. The Board also finds that locating the

dwelling to avoid disturbing steep slopes would result in the dwelling being closer to the adjacent dwelling, cause further deviations from the Ordinance's bulk requirements, and possibly result in additional areas of land disturbance.

34. The Board finds that the hardship that would result from the strict application of the zoning ordinance provisions would not be the result of conditions that were "self-created" by the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1), for the requisite steep slope disturbance variance relief.

Subsection c(2) – Positive Criteria:

35. As to the positive criteria for subsection "c(2)" or "flexible c" variance relief for the steep slope disturbance, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviation from the zoning requirement and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that locating the proposed dwelling in an area without steep slopes would require additional land disturbance, would result in the dwelling being closer to the adjacent neighbor, and would encroach upon and impede the emergency access easement. As such, the Board finds that locating the dwelling as proposed actually constitutes a better planning alternative than locating it in another potentially conforming location. The Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below.

Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2), for the requisite steep slope disturbance variance relief.

Negative Criteria:

36. As to the negative criteria required for the applicable variance relief, pursuant to both subsections c(1) and c(2), the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

37. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not be substantially out of character with the existing neighborhood and will not have a significant detrimental impact on the surrounding properties. In this regard, the Board recognizes that the steep slopes that the Applicants propose to disturb are manmade, will be completely eliminated, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on adjacent properties. The Board further recognizes, in this regard, that no member of the public objected to the Applicants' proposal.

38. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal is not substantially inconsistent with the Zone Plan or Zoning Ordinance, particularly since the dwelling will now face the road as do the other dwellings on Wisteria Way. The Board recognizes that part of the legislative intent underlying steep slope ordinances is to mitigate the potential detriments of stormwater runoff, and the Board finds that the Applicants' proposed stormwater management should be sufficient, pursuant to the expert testimony of the Applicants' engineer, as concurred with by the Board Engineer. The Board finds that the requested deviation is relatively modest in nature and certainly does not rise to the

level of constituting a rezoning of the Property. As such, the Board finds that the Applicants have satisfied the negative criteria, pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2), for the steep slope disturbance variance relief.

39. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested steep slope disturbance relief, under both of the alternative bases for such relief under N.J.S.A. 40:55D-70(c).

WHEREAS, the Board took action on this application at its meeting on December 8, 2021, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 5th day of January, 2022, that the application of **ANILA FAIZAN and FAIZAN AHMED**, 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 pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
3. The Applicants shall revise the Plans to improve clarity and legibility and to identify the different steep slope categories based on the ten-foot contour intervals consistent with Ordinance Section 21-14.2.b;
4. The Applicants shall revise the stormwater management design on the Plans consistent with the evidence and testimony presented at the hearing and the design shall be subject to further review and approval by the Township Engineering Department prior to issuance of construction permit;
5. The Applicants shall confirm or correct the proposed improvable lot area indicated on the steep slope plan as it currently appears that the improvable lot area (41,659 square feet) includes the portion of the building envelope located north of the emergency access easement;

6. The Applicants shall revise the plans to include a calculation of the height of the proposed dwelling, which shall be subject to review and approval by the Township Zoning Officer prior to the issuance of a construction permit;
7. The Applicants shall submit a tree protection, removal, and replacement plan conforming to Section 21-45 of the Ordinance, which shall be subject to the review and approval by the Township Engineering Department prior to any further land disturbance. The tree plan must account for all existing trees to be removed or to be preserved, including trees previously removed or cut down. Most of the existing trees shown on the plans previously submitted have been cut down, other existing trees are not shown on the plans, and many stumps, trunks and logs are present from prior tree cutting activity. Replacement trees in accordance with the table in Section 21-45.1.d of the Ordinance must be provided for all removed trees with a diameter of 10" or greater;
8. The Applicants shall revise the Plans to indicate to what extent the septic field will appear "mounded," and shall provide landscape buffering if necessary to soften the appearance of the septic field as viewed from the residence to the south side and from Wisteria Way, to the satisfaction of the Township Engineering Department;
9. The Applicants shall demonstrate that the existing swimming pool is enclosed by a code-compliant safety barrier, prior to issuance of a construction permit;
10. The Applicants shall install all proposed utility services underground and shall route the same to minimize any disturbance to the existing trees;
11. The Applicants shall obtain an engineering permit prior to any work within the Township right-of-way;
12. The Applicants shall complete and submit a Township standard lot coverage disclosure form prior to issuance of a construction permit;
13. This proposal shall remain subject to all conditions of prior Planning Board resolutions, including that the emergency access road shall be maintained by the Applicants and remain unobstructed (including during construction of the proposed dwelling) in accordance with the terms of the Emergency Access Easement, which was recorded in 2002. A certificate of occupancy will not be issued for the dwelling unless the easement area is in compliance with the terms of the Emergency Access Easement;
14. The Applicants shall not use of the Emergency Access Easement on adjoining lot 4 for construction-related activities or access;
15. The Applicants shall pay a development fee in accordance with Section 21-86 of the Ordinance;

16. The Applicants shall employ stormwater “best management” practices during site work and as part of final site grading and restoration;
17. Native hardwood species shall be planted whenever practical;
18. The Applicants shall implement best practices to preserve and protect existing trees during site work;
19. The Applicants shall revise the plans to show the inverts for the proposed storm sewer conveyance and collection system;
20. The Applicants shall revise the plans to indicate the location of the existing septic field and tank that serviced the former dwelling, which was removed in 2021;
21. The Applicants shall revise the plans to identify the post development graded slopes to be constructed at a maximum slope of 3 foot horizontal to 1 foot vertical;
22. The Applicants shall revise the plans to expand the limit of disturbance around the area of the proposed septic field, to reflect a more realistic limit based on the amount of grading that will take place;
23. The Applicants shall expand the limits of disturbance (LOD) to include the area of the former dwelling removal and clearing as this may impact the stormwater management design if the LOD disturbs one or more acres of land.
24. The Applicants shall revise the drainage computations for the drywells so as to only take credit for the volume below the proposed discharge pipe as the Township requires an infiltration volume equivalent to 3 inches for each new square foot of impervious coverage.
25. The Applicants shall revise the drywell details to indicate that soil permeability testing shall be done within the footprint of the proposed drywells, and the permeability rating and drain time calculations shall be subject to review and approval by the Township Engineering Department;
26. The Applicants shall use scour holes for conduit outlet protection rather than aprons given the sloped nature of the Property;
27. The Applicants shall use a double silt barrier, such as hay bales and or silt fence, along the southern and easterly property boundaries, to prevent migration of soils off site, and the plans shall be subject to certification by the Somerset-Union Soil Conservation District;
28. The Applicants shall revise the grading plan so that no stormwater runoff from the proposed asphalt driveway turnaround can bypass the track drain;


29. Any proposed exterior lighting shall be directed downward or otherwise appropriately shielded or recessed and shall comply with all applicable Ordinance requirements so that glare, directed light or reflection will not be a nuisance to adjoining properties;
30. The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission;
31. 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;
32. 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
33. 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 (1) year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of January 5, 2022.



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

Dated: January 5, 2022