

BERNARDS TOWNSHIP

ZONING BOARD OF ADJUSTMENT

MINUTES v2
Regular Meeting
February 9, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:33 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Chairwoman Genirs read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this 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, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk, all on January 6, 2022 and was electronically mailed to all those people who have requested 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 PM and no new witnesses or testimony heard after 10:30 PM.

ROLL CALL:

Members Present: Amin, Baumann, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: Cambria
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the absence of Mr. Cambria was excused.

APPROVAL OF MINUTES

January 5, 2022 – Reorganization & Regular Sessions - On motion by Mr. Kraus, seconded by Ms. Pochtar, all eligible in favor and carried, the minutes were adopted as drafted. Ineligible: Ms. Baumann (absent)

APPROVAL OF RESOLUTIONS

Baston 95 LLC; Block 704, Lot 1.01; 95 Morristown Road; ZB21-015 (denied) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Baumann seconded. (Frederick B. Zelley, Esq., Attorney for the Applicant, was present.)

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

Motion carried.

Porr, Michael & Wendy; Block 1611, Lot 48; 10 Prospect Avenue; ZB21-028 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Pochtar seconded. (Frederick B. Zelley, Esq., Attorney for the Applicant, was present.)

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

Motion carried.

Wang, H./Chang, G.; Block 4301, Lot 25; 40 Ridgeview Drive; ZB21-032 (approved) – Mr. Kraus moved approval of the resolution as drafted. Mr. Tancredi seconded.

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

Ineligible: Amin, Baumann

Motion carried.

COMPLETENESS HEARING

Verizon Corporate Services Group Inc.; Block 803, Lots 2, 3, 5, 6, 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Variances, Waivers; ZB22-002

Present: Kevin J. Boris, Esq., Attorney for the Applicant
Bryan Ehnes, PE, Engineer for the Applicant

Kevin J. Boris, Esq., attorney with the firm of *Wilentz, Goldman & Spitzer PC*, Woodbridge, NJ entered his appearance on behalf of the Applicant to request checklist waivers for three (3) items for completeness purposes.

Mr. Ehnes, Mr. Quinn and Mr. Schley were duly sworn.

Bryan Ehnes, PE, engineer with the firm of *Bohler Engineering PC*, Warren, NJ, was accepted by the Board as an expert in the field of civil engineering and provided testimony to support the checklist waiver requests. Mr. Schley and Mr. Quinn stated that they had no issues with the requests.

Mr. Tancredi moved to grant the waiver requests for completeness purposes and to deem the application complete. Ms. Pochtar seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Fetchko, Michael E. & Amy H.; Block 1204, Lot 11; 103 Washington Avenue; Bulk Variances; ZB21-035

Present: Michael E. and Amy H. Fetchko, Applicants

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

Michael E. Fetchko, Applicant residing at 103 Washington Avenue, testified that the proposed project, construction of two (2) dormers on an existing 1.5 story dwelling, requires relief for encroachment into the front yard setback. He stated that although the existing house encroaches further into the setback than the proposed dormers, the dormers still require relief because they constitute a vertical extension of the portion of the structure in the setback. Mr. Fetchko also noted that because the subject property is wide but not deep, most of the existing dwelling encroaches into either the front yard setback or the back yard setback. Finally, he stated that the pictures submitted with the application were taken by the architect and accurately depict the property as it currently exists.

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 a c(1)" or "hardship" variance. Ms. Pochtar 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. Mr. Kraus seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Birkhold, A./Kostinas, L.; Block 3901, Lot 58; 33 Spring House Lane; Bulk Variance; ZB21-033

Present: Frederick B. Zelle, Esq., Attorney for the Applicants

Dean A. Andricsak, AIA, Architect for the Applicants

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

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants and advised the Board that due to personal issues, neither Applicant was available to appear at the hearing. He stated that the proposed project, construction of a second floor addition on top of an existing single story garage portion of existing dwelling, requires relief for maximum permitted floor area. In addition, he stated that the Applicants were seeking approval for existing nonconforming lot coverage which appears to be the result of a rear patio that was installed by prior owners without Township approval. Noting that the maximum allowable floor area and impervious coverage are determined by the size of the property, he opined that a hardship exists because of the relatively small size of the subject property. Finally, he testified that he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists.

Dean A. Andricsak, AIA, architect with the firm of *D2A Architecture and Design LLC*, Martinsville, NJ, was accepted by the Board as an expert in the field of architecture and gave a brief overview of the subject property and surrounding neighborhood. He testified that the proposed addition, a lounge/bar area and two (2) bedrooms each with a private bathroom, would provide an area for Ms. Kostinas' parents to stay during the holidays. He confirmed that there would be no separate outside egress/ingress or cooking facilities.

Referring to **Exhibit A-1**, a compendium of two (2) 8-1/2" X 11" color aerial photos (Google Earth dated 2018 and 2013), Mr. Zelle noted that the rear patio on the property appears in both photos proving that it existed prior to the property's purchase by the current owners. He concurred that stormwater mitigation measures should have been implemented at the time of installation but because there have been no complaints or runoff issues associated with the patio, the Applicants were asking for a waiver. After a brief discussion, the Board asked that the Applicants stipulate to either the installation of a drywell in the front yard or to ensure that all of the downspouts are connected to the existing inlet. Mr. Zelle advised that he would have to contact the Applicants.

Hearing no further questions, Chairwoman Genirs opened the hearing to the public for questions or comments.

Todd Edelstein, 172 Riverside Drive, was duly sworn and opined that requiring that the gutters be connected to the inlet would not constitute a hardship on the Applicants.

Hearing no further questions or comments from either the Board or the public, Chairwoman Genirs closed that portion of the hearing.

Mr. Zelle summarized the facts supporting the positive and negative criteria for "c-2" or "benefits outweigh detriments" variance relief. He opined that relief could also be approved under the "c-1" or "hardship" variance criteria since the subject property is both narrower and smaller than most of the properties in the area. He then asked for an opportunity to contact the Applicants in reference to the gutters. Chairwoman Genirs agreed and the hearing for this application was recessed until later this evening.

COMPLETENESS AND PUBLIC HEARING

Heymann, F./Chiclana, M.; Block 2905, Lot 1; 24 Woodstone Road; Bulk Variance; ZB21-034

Present: Frederick Heymann, Maria Chiclana, Applicants

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

Maria Chiclana, Applicant residing at 24 Woodstone Road, testified that in 2019, approval was granted by the Township to construct a detached garage. During construction, an existing paver patio was removed and once the project was complete, a new paver patio and walkway were installed. She added that because the driveway, which was narrow and curved, represented a safety concern, it was expanded and reconfigured. The patio,

walkway and driveway modification were all done without Township review or approval. When the current proposal, construction of a covered breezeway between the detached garage and principal dwelling, was submitted, it was discovered that the maximum permitted impervious coverage for the property had been exceeded by over 700 sq. ft. In addition, relief for encroachment into the side and rear yard setbacks for an existing shed, was required. Finally, she confirmed that she had taken the pictures submitted with the application and that they accurately depict the property as it exists today.

Mr. Schley explained that if the existing detached garage which is considered an accessory structure, is attached to the dwelling by the proposed covered breezeway, it will become part of the principal structure and the required side and rear setbacks will increase and also require variances. He added that the initial plan for the detached garage was conforming in both coverage and setbacks and that most of the excess coverage could be attributed to the reconfigured driveway and paver patio/walkways which cover more area than what was shown on the plans.

Ms. Chiclana testified that because the front door does not have a walkway, the main entrance to the dwelling is through the back door and a paver walkway was installed to provide access. A paver patio was also installed. She added that any potential water runoff issues from the increased coverage were addressed with the installation of subsurface drainage piping, which, she admitted, was never reviewed or inspected by the Township. Mr. Quinn advised the Board that he could not confirm whether or not the piping was sufficient to mitigate any runoff issues since he could not quantify the amount of runoff the piping would be able to handle without digging it up. He recommended that installation of a drywell connected to the existing inlet should be required based on what currently exists on the property. The Applicants stipulated to providing proof that the piping provided adequate runoff mitigation or, in the absence of that, installation of appropriate stormwater management measures.

Frederick Heymann, Applicant residing at 24 Woodstone Road, testified that the original one-car attached garage had been made into a room. When they decided to construct the detached garage and breezeway, the contractor advised that because construction of both would create a coverage issue, they should build the garage first and apply for variance relief for the remainder of the project at a later date.

The Applicants amended their request for approval for side and rear setbacks for the existing shed from 8' to 7'-7.5' and also agreed to remove the existing graveled area between the shed and the fence.

The comments in Mr. Schley's memo (02/03/2022), Mr. Quinn's memo (02/07/2022) and the Environmental Commission's memo (01/26/2022) were addressed to the satisfaction of the Board and its professionals.

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.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for c(2)" or "detriments outweigh benefits" variances. 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. Chairwoman Genirs seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING – (continued from earlier in the evening)

Birkhold, A./Kostinas, L.; Block 3901, Lot 58; 33 Spring House Lane; Bulk Variance; ZB21-033

Mr. Zellely advised the Board that the Applicants stipulated to confirming that the downspouts connect to an existing inlet and that, if they are not connected, to either (1) connecting them, (2) installing alternative stormwater runoff mitigation measures, same to be reviewed and approved by the Township Engineering Department, or (3) removing some of the existing coverage so that the increase in coverage resulting from the

patio construction is less than 1,000sf.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for both "c(1)" or hardship variance relief and "c(2)" or "detriments outweigh benefits" variance relief. 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. Chairwoman Genirs seconded.

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

Motion carried.

* * * *The Open Session was recessed at 9:43 PM and reconvened at 9:50 PM.* * * *

PUBLIC HEARING

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

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| Present: | Frederick B. Zelle, Esq., Attorney for the Applicant |
| | William G. Hollows, PP, PE, Engineer for the Applicant |
| | Daniel W. Lincoln, RA, Architect for the Applicant |
| | John P. Boyle III, Managing Member, B3 Church Street LLC |

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Hollows, Mr. Lincoln, Mr. Boyle, Mr. Quinn and Mr. Schley were duly sworn.

Frederick B. Zelle, Esq., attorney with Bisogno, Loeffler & Zelle LLC, Basking Ridge, NJ, entered his appearance on behalf of the Applicant and stated that the proposal, converting the second floor of an existing building from business use into two (2) apartments, requires a "d-1" use variance to allow two (2) dwelling units where only one (1) is permitted. In addition, the proposal includes the replacement of four (4) existing parking area light poles with pole-mounted LED fixtures which requires relief for maximum spacing of light standards for other than walkway lighting. He also noted that the site contains various pre-existing and previously approved nonconformities that are proposed to remain.

John P. Boyle III, Managing Member of B3 Church Street LLC (the Applicant), Fanwood, NJ, testified that the property was purchased in 2021. He noted that the existing building previously served as the Liberty Corner Fire House and was converted to business use in accordance with a site plan approval granted by the Planning Board in 1993. A bike shop (Just Riding Along) currently occupies the first floor of the building and the second floor is vacant. The proposal includes interior renovations to the second floor to create two (2) two-bedroom apartments with access to an existing deck on the back of the building. Mr. Boyle confirmed that B3 Church Street LLC would be the landlord.

Hearing no questions from the Board, the hearing was opened to the public for questions of this witness. Hearing none, that portion of the hearing was closed.

William G. Hollows, PP, PE, engineer with the firm of *Murphy & Hollows LLC*, Stirling, NJ, was accepted by the Board as an expert in the field of civil engineering. **Exhibit A-1**, a colorized rendering of the existing conditions on the subject property in 1993, undated and prepared by Mr. Hollows, was entered into evidence. Mr. Hollows testified that when the as-built was done in 1994, the dumpster had been moved to its current location and that no changes to the site are proposed. **Exhibit A-2**, Page 1 of 1 of plans labeled "Parking Layout," dated 02/09/2022 and prepared by Mr. Hollows, was entered into evidence. Using the exhibit, he described the changes that had been made in the parking lot (from the initial submittal) in response to comments made by the Board's professionals and testified that the number of parking stalls would exceed the number required by ordinance. In response to a question from Chairwoman Genirs, Mr. Boyle stated that he did not feel that marking specific stalls as "Residential" was necessary however, he would reconsider if it became an issue.

Mr. Hollows stated that, rather than replace the existing light poles, the Applicant proposes to retrofit the existing fixtures with LED lighting. A timing mechanism be utilized to dim the lights to security level after 11:00 PM.

As requested by Mr. Quinn, Mr. Boyle agreed to install bollards by the west side entrance for safety reasons.

The comments in both Mr. Quinn's memo dated 02/08/2022 and Mr. Schley's memo dated 02/07/2022 were addressed to the satisfaction of the Board and the professionals although Mr. Schley noted that the revisions shown on **Exhibit A-2** would be subject to further review by staff.

A discussion about trash and recycling ensued and the Applicant stipulated to providing adequate trash removal. He also stipulated to providing a fenced-in area near the trash area for abandoned bikes.

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

Daniel W. Lincoln, RA, architect with a business address of Bernardsville, NJ, was accepted by the Board as an expert in the field of architecture. He gave a brief description of the building and the proposed new dwelling units. He testified that there would be no significant structural changes in the interior and no changes to the exterior, adding that the bathrooms will be sized for ADA compliance even though the second floor currently lacks handicap accessibility. Finally, he confirmed that he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists.

The comments in both Mr. Quinn's memo dated 02/08/2022 and Mr. Schley's memo dated 02/07/2022 were addressed to the satisfaction of the Board and the professionals.

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

Mr. Zellely provided closing arguments to demonstrate entitlement to the requested relief.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required to grant the relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Baumann moved to direct the Board Attorney to draft a resolution memorializing the Board's decision. Mr. Tancredi seconded.

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

Motion carried.

COMMENTS FROM MEMBERS OR STAFF – Chairwoman Genirs reminded the Board that there is a meeting scheduled for Thursday, February 17, 2022.

ADJOURN

Moved by Ms. Baumann, seconded by Mr. Tancredi, all in favor and carried, the meeting was adjourned at 11:23 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 03/09/2022

03/02/2022 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**BASTON 95, LLC
Case No. ZB21-015**

RESOLUTION

WHEREAS, **BASTON 95, LLC** (the “Applicant”) is the owner of the property on which the former Vine Restaurant is located, and has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) seeking preliminary and final major site plan approval, together with variance and site plan design exception relief as set forth below, in connection with the construction of a new, two-story building to be used as a restaurant with an outdoor patio and related site improvements, to be located on property identified as Block 704, Lot 1.01 on the Township Tax Map, more commonly known as 95 Morristown Road (the “Property,” the “Lot,” or the “Site”):

- (1) A d(1) variance for a non-conforming use (a restaurant), whereas a restaurant is not a permitted use in the R-6 residential zone, pursuant to Section 21-10.4.a.1 of the Land Development Ordinance;
- (2) A bulk variance for a proposed front-yard setback of 45 feet, whereas the existing front-yard setback is 33.7 feet, and the minimum required front-yard setback is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (3) A bulk variance for an existing and proposed lot coverage of 38.3%, whereas the maximum lot coverage permitted is 18%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (4) A bulk variance for an existing and proposed distance of 2.3 feet between two existing sheds, whereas the minimum required distance between buildings is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance;
- (5) A bulk variance for sign lettering having a height of less than 4”, whereas the minimum required sign lettering height is 4”, pursuant to Section 21-17.2.1.1 of the Land Development Ordinance¹;

¹ The Applicant subsequently amended the application so as to comply with the required lettering height and

- (6) A bulk variance for signage, whereas commercial signs are not permitted in residential zones, pursuant to Section 21-17.3 of the Land Development Ordinance;
- (7) A bulk variance for 85 proposed parking spaces, whereas 83 parking spaces exist, and the minimum number of parking spaces is 194, pursuant to Section 21-22.1.a.1 of the Land Development Ordinance;
- (8) A bulk variance for an existing and proposed buffer width of 20.1 feet, whereas the minimum required width of a buffer abutting a residentially zoned lot is 50 feet, pursuant to Section 21-28.2.a of the Land Development Ordinance;
- (9) A design exception for existing and proposed parking space dimensions of 9' by 18', whereas the minimum required parking space dimensions where a 2' vehicle overhang area is not provided are 10' x 20', pursuant to Section 21-39.1.b.2 of the Land Development Ordinance;
- (10) A design exception for existing and proposed parking space dimensions of 9' by 18', whereas the minimum required parking space dimensions where a 2' vehicle overhang area is provided are 10' x 18', pursuant to Section 21-39.1.b.2 of the Land Development Ordinance;
- (11) A design exception for no loading space, whereas at least one (1) loading space is required, pursuant to Section 21-39.2.a of the Land Development Ordinance;
- (12) A design exception for no drive aisle width for six (6) tandem parking spaces, whereas the minimum required aisle width for 90° parking is 24 feet, pursuant to 21-39.3.a.5 of the Land Development Ordinance;
- (13) A design exception for less than 10% of open space within the perimeter of the parking area, whereas a minimum of 10% is required, pursuant to Section 21-39.3.a.6 of the Land Development Ordinance; and
- (14) A design exception for a 24' wide fire lane in front of the main entrance with the road edge 5.5' from the building, whereas all buildings shall have fire lanes in front of their public entrance which shall be at least 25 feet in width with the road edge closest to the structure at least 20 feet from the structure, pursuant to Section 21-46A.1.e.5 of the Land Development Ordinance; and

eliminate the need for this specific variance relief.

WHEREAS, public hearings on notice were held on such application on June 17, September 16, October 6, and December 8, 2021, at which times 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 members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board previously reviewed the application and deemed it complete.
2. The Site contains 2.266 acres, is located on the southeast (northbound) side of Morristown Road (U.S. Route 202), and is improved with a three-story, 6,352 square foot building formerly occupied by the Vine Restaurant. The Site also includes an 892 square foot outdoor dining patio that adjoins the front of the building, two sheds, a garden, and an underground stormwater detention system at the northeast end of the Site, and a trash enclosure with attached shed/storage unit at the rear of the Site. Two (2) driveways provide one-way ingress and egress to the existing 83 paved parking spaces.
3. The Applicant proposes to redevelop the Site with a new restaurant, including:
 - i. A two-story, 7,511 square foot building and 1,792 square foot podium/patio are proposed in generally the same location as the existing building and patio, though the new structures will be set back further from Morristown Road. The proposed restaurant has the same number of seats as the existing restaurant (165 inside and 50 outside);
 - ii. The existing parking layout is proposed to be modified, resulting in an increase in parking supply from 83 to 85 spaces.² The modifications are for the most part contained within the existing parking/pavement perimeter, except where six (6) tandem parking

² Technically, the Applicant proposes 88 parking spaces because the inclusion of three “make ready” electric vehicle charging stations, pursuant to N.J.S.A. 40:55D-66.20.3.e “shall count as at least two parking spaces for the purpose of complying with the minimum required parking space requirement.”

spaces are proposed to be added on the southwest side of the Property;

- iii. The existing 12' high parking area light poles are to be replaced with new 12' high poles with LED fixtures;
- iv. A 6' high solid fence is proposed for a length of approximately 228' along the existing residences to the rear of the Site. The landscape plan includes evergreen plantings within this buffer area;
- v. The freestanding identification sign and two directional signs presently located between the driveways are to be relocated out of the street right-of-way;
- vi. The two existing one-way driveways are to remain in their existing locations;
- vii. The three existing sheds, garden, underground stormwater detention system, and trash enclosure are proposed to remain in their existing locations; and
- viii. The proposed building, like the existing building, is to be connected to the public water and sanitary sewer systems.

4. The Restaurant is a pre-existing nonconforming use in the R-6 Residential Zone.

As set forth in the resolutions submitted with the application, a restaurant has existed on this Site for many years and was the subject of at least four (4) prior applications to the Board of Adjustment. Prior Board decisions include approval to expand the restaurant use (interior renovations only) and parking area in 1982, denial of a proposed building/parking expansion in 1993, and approval of a minor subdivision in 2006. The subdivision approval created adjoining Lot 1.02 to the southwest, which is now occupied by a dwelling, but did not expand the restaurant use. Most recently, in 2017, the Board approved construction of the existing outdoor dining patio.

5. Since a restaurant is not a permitted use in the R-6 Zone, the proposal requires a use variance pursuant to N.J.S.A. 40:55D-70(d)(1). In addition to a subsection d(1) use variance, the Applicant seeks the aforementioned bulk variance relief pursuant to N.J.S.A. 40:55D-70(c), site plan design exceptions, and preliminary and final site plan approval.

6. The Applicant submitted a Preliminary and Final Site Plan prepared by Catherine A. Mueller, P.E., dated February 16, 2021, last revised April 19, 2021, same consisting of five (5) sheets; a Topographic Survey prepared by William G. Hollows, P.E., P.L.S., P.P., dated December 31, 2020, unrevised, same consisting of one (1) sheet; Architectural Plans prepared by Jeffrey Martinson, R.A., dated April 15, 2021, last revised September 23, 2021, same consisting of two (2) sheets; Landscape Plans prepared by Jim Mazzucco, L.L.A., dated February 9, 2021, last revised April 15, 2021, same consisting of three (3) sheets; a Stormwater Management Report prepared by Catherine Mueller, P.E., dated January 2021, last revised April 2021; New Jersey Department of Environmental Protection (“NJDEP”) Regulatory Assessment prepared by John Peel, P.P., of PK Environmental, dated April 5, 2021; Approval of the Somerset County Planning Board, dated March 17, 2021; and information about the proposed Generac 20kW Guardian Series Automatic Standby Generator.

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

8. Frederick B. Zelle, Esq., entered his appearance on behalf of the Applicant. He explained that the Applicant is seeking preliminary and final site plan approval, along with subsection d(1) use variance, bulk variance and design exception relief, to raze an existing three-story restaurant/building, formerly known as the Vine, and replace it with a larger two-story restaurant/building. Mr. Zelle advised that the new building would be set back farther from Morristown Road than the existing restaurant, which would reduce an existing front-yard setback nonconformity. He further advised that the seating capacity would remain the same, but the parking would increase from 83 stalls to 85 stalls.³ Mr. Zelle stated that restaurants are not

³ Technically, the Applicant proposes 88 parking spaces because the inclusion of three “make ready” electric vehicle charging stations, pursuant to N.J.S.A. 40:55D-66.20.3.e “shall count as at least two parking spaces for the purpose

permitted in the R-6 Residential Zone, but noted that a restaurant had operated as a pre-existing nonconforming use on this Property for many years, albeit a new building is being proposed in a new location on the Property.

9. Afrim Berisha, Managing Partner of the Applicant LLC, having a business address of 20 Gold Boulevard, Basking Ridge, New Jersey, was duly sworn according to law. Mr. Berisha stated that he has owned and operated restaurants for over 30 years and had previously owned the restaurant on the subject property, the Vine, for many years. He explained that he recently repurchased the Property with two (2) partners. Mr. Berisha confirmed that the photographs submitted with the application materials were taken by the Applicant's engineer, Ms. Mueller, and that they accurately depict the Property as it currently exists.

10. Mr. Berisha described the existing restaurant as having four (4) floors (a cellar and 3 floors), a seating capacity of 165 patrons inside and 50 patrons outside, and 83 parking stalls. He explained that the existing building is not up to date, is not Americans with Disabilities Act ("ADA") compliant, and does not have sprinklers. Mr. Berisha contended that, since the seating capacity was not changing, the existing parking would be sufficient.

11. Mr. Berisha testified that the proposed restaurant would be state-of-the-art, serve Mexican food California style and have three (3) floors (cellar and 2 floors) with 15 to 18 employees. The cellar will have a preparation area, kitchen (for serving large private parties), storage, refrigeration/freezer units and a small office. The first floor, which is the only floor that will be ADA compliant, will feature a semi-open kitchen for *a la carte* service, a bar and a spacious seating area. The second floor will have two (2) private party areas and a high-end tequila bar with an open-air terrace. He emphasized that the terrace will be used for dining (seasonal) with

of complying with the minimum required parking space requirement."

table-service only, and not as a nightclub or sports bar where patrons can stand around. He confirmed that there would be no live bands or outdoor entertainment. Mr. Berisha testified that the new building will be shifted further from the right-of-way, which he contended would provide a safer, quieter option for those dining on the patio, and he stipulated to using umbrellas without advertising, as had been stipulated to in a previous application (#ZB16-032 for the patio).

12. Mr. Berisha testified as to the timing and frequency of deliveries, as well as the type of deliveries he anticipated receiving. He conceded that he had spoken with the neighbors and that their main concern is the potential noise level generated by the terrace. Mr. Berisha suggested that such concerns would be mitigated by additional landscaping, a solid six-foot high fence along the rear of the Property, and downward directed lighting fixtures in the parking areas.

13. In response to questions from the Board, Mr. Berisha testified that there may be take-out on a limited basis; the cellar will not have any dining areas; there will be self-seating only in the two (2) bar areas; and the hours of operation will be 11:30 AM to 11:00 PM Monday through Friday, with later closing hours on the weekends.

14. Jean Marie Dour, having an address of 28 Franklin Drive, questioned the total capacity of the building and whether the parking lot configuration would change. Mr. Berisha responded that the seating capacity would remain the same as would the parking area with the exception of wider drive aisles.

15. Stacey Molinari, having an address of 27 Franklin Drive, asked about the “open ceiling” concept for the terrace. Mr. Berisha responded that that concept had been abandoned.

16. Terrence Breidigan, having an address of 69 Morristown Road, questioned the location of the trash area and Mr. Berisha stated that the trash area would remain in the same location; however, it will be fenced in and landscaped.

17. Margaret (Meg) Dolan, having an address of 15 Parkview Avenue, questioned whether there is a plan to reduce noise by limiting dumpster use, especially at night after closing.

18. Jeffrey C. Martinson, R.A., having an address of 204 Bushkill Street, Easton, Pennsylvania, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. Martinson opined that the existing circulation in the parking areas is somewhat confusing and that the existing shoebox style of lighting is outdated, inefficient and unattractive. He explained that renovation of the existing building would be easier and cheaper, but recommended replacing the existing building given the disjointed room relationships; lack of sprinklers; noncompliance with Construction Code requirements; multiple safety and fire hazards; antiquated mechanical systems; and lack of a clear point of arrival. Mr. Martinson conceded that he had not conducted a formal analysis, but nevertheless he believed that the existing building was not structurally sound.

19. Mr. Martinson testified that, in designing the building, he considered how it could fit on the Site, while maintaining the existing ingress/egress pattern, the same amount of parking and the existing amount of impervious coverage. He explained that, by shifting the building back approximately 18' from the right-of-way, sight lines would be improved. Mr. Martinson explained that the overall goal of the design was to create a positive dining experience for each person entering in the facility.

20. Mr. Martinson introduced into evidence, as **Exhibit A-1**, a compendium of five (5) renderings of the building and, as **Exhibit A-2**, Sheet 1 of 2 of the Land Development Plans, showing the seating arrangement, both dated April 15, 2021 and both prepared by the Martinson Group LLC. Referencing **Exhibit A-2**, Mr. Martinson explained that the new layout provides a clear delineation between the working areas of the restaurant and the customer areas. He further

explained that the proposed new building will be modern, energy efficient and ADA compliant (on the first floor only), and that an elevator is not proposed because of the lack of space therefor. Mr. Martinson testified that there will be no windows on the wall facing the adjacent residential neighbors and the entire building will be sprinklered.

21. Mr. Martinson testified that the new building design features Spanish-revival architectural components and connotes a luxurious estate home ambiance. He confirmed that the building complies with the maximum height allowable of 35' at the tower and chimney, with the remainder of the building at a lower height. Mr. Martinson explained that the increase in building footprint is a result of the improvements to the layout, a large entrance vestibule with a generous hostess area and more room around each table, all of which contributes to the overall dining experience, but does not increase seating capacity.

22. Mr. Martinson described the proposed building materials as including stucco, stone and decorative tiles, along with wrought iron railings. He testified that the proposed architectural accents for the interior include arches, decorative tile, wide staircases, sconces and wood beams. Mr. Martinson further testified that the kitchen on the first floor would be partially open. Mr. Zelley stated that all of the plans for the interior and exterior are conceptual and would be finalized prior to the next hearing. Questions from the Board included whether one (1) of the two (2) proposed staircases could be replaced with an elevator (no; the Uniform Construction Code requires 2 staircases); does the Spanish style harmonize with the character of the surrounding area; and will the windows affect the neighbors' privacy.

23. At the September 16, 2021 hearing, Mr. Zelley gave a brief summary of the testimony provided during the June 17, 2021 meeting and introduced the following exhibits into evidence:

- **Exhibit A-3**: Roof and Floor Plans, Sheet 1 of 2, revised September 16, 2021, prepared by the Martinson Group;
- **Exhibit A-4**: Building Elevations, Sheet 2 of 2, revised September 16, 2021, prepared by the Martinson Group;
- **Exhibit A-5**: Colorized Perspective Renderings (5), dated September 16, 2021, prepared by the Martinson Group;
- **Exhibit A-6**: 8.5” x 11” Color photographs of glass brick wall, prepared by the Martinson Group;
- **Exhibit A-7**: Color Aerial photograph of the Site Area, dated September 16, 2021 (Bing Maps), prepared by Page-Mueller Engineering Consultants; and
- **Exhibit A-8**: Planting Aerial, dated September 16, 2021, prepared by Bosenberg & Co. Landscape Architecture.

24. Mr. Martinson, having been previously sworn, testified that, based on comments from the previous meeting, the Applicant revised the plans. Referencing Exhibit A-3, Mr. Martinson described the revised loggia seating plan and noted that the revised plans provide a better depiction of the area around the bar. Referencing Exhibit A-4 and Exhibit A-5, Mr. Martinson described the additional plan revisions. He explained that a “glass brick” wall, similar to the one shown in Exhibit A-6, would be constructed on the northerly side of the terrace, to address the neighbors’ privacy concerns. Finally, Mr. Martinson confirmed that, despite the revisions, there would not be an increase in the restaurant’s proposed seating capacity of 215 seats.

25. On discussion of whether the Applicant would be able to ensure that the number of patrons would not exceed the 215 seats proposed, Mr. Berisha explained that there are only a finite number of people he can accommodate while still maintaining the desired dining experience and providing a high level of customer service. He confirmed that there would not be television or live music in either of the bars and that no music would be played on either the terrace or the patio.

26. Members of the public questioned the actual number of patrons compared to the proposed number of seats; the size, architectural style, seating capacity, and parking configuration of the proposed restaurant; the opacity of the proposed “glass bricks” and whether a sound expert would testify; and whether the light emanating from windows/terrace would detrimentally impact the adjacent properties.

27. Catherine Mueller, P.E., C.M.E., having a business address of P.O. Box 4619, Warren, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of civil engineering. Referencing Exhibit A-7 and Exhibit A-8, she described the Property, the existing environmental constraints, particularly, the NJDEP wetlands buffer which occupies a significant portion of the Property, the surrounding residential areas, and the relief requested. She testified that the proposal would not increase the previously approved total existing lot coverage, even though the new restaurant increases the floor area by more than 1,000 square feet. Ms. Mueller noted that the proposal would improve on-site circulation, as well as provide two (2) additional parking stalls. In reference to the proposed tandem parking area, which the Applicant envisions to be for employee parking or possibly valet parking in the future, Ms. Mueller suggested that “Staff Parking Only” could be painted on the pavement. She contended that there would not be any light spillage along the residential property lines and she stipulated, on behalf of the Applicant, that exterior lighting would be shielded or downward directed, and would remain on until 1:00 AM only if the restaurant is still open at that hour. Ms. Mueller confirmed that, after closing, the lighting would be reduced to security lighting levels.

28. Ms. Mueller explained that the number of required parking stalls is determined by either the total number of seats or by the gross floor area, whichever is greater. If parking is calculated using the number of seats (215), the proposed 85 spaces would exceed the number of

required parking spaces by 13, and variance relief would not be required.⁴ On discussion of the dumpster location (previously approved to be located in the wetlands buffer), Ms. Mueller testified that, if it were relocated outside the buffer, it would be closer to the neighboring residences and would require additional approval from the NJDEP. She further testified that a new dumpster enclosure would be constructed and she stipulated, on behalf of the Applicant, that the nearby fence would be upgraded to attenuate noise. In addition, the Applicant stipulated that employees would not be allowed to dump recycling into the dumpster after 10:00 PM, to eliminate the nuisance associated with same. Ms. Mueller noted that, even though the number of seats (which determines the sanitary sewer requirements) would remain the same as the prior restaurant use, the proposal still would have to be reviewed by the Bernards Township Sewage Authority.

29. As to the proposed signage, Ms. Mueller confirmed that the three (3) proposed signs would be the same size as the three (3) existing signs. She explained that the signs still require variance relief, since such signs are not permitted in residential zones. She testified that there would be no change in the drainage patterns or in the size or location of the existing detention basin. Ms. Mueller addressed the engineering comments in the Board Planner's Review Memorandum, dated June 15, 2021; the Board Engineer's Review Letter, dated June 16, 2021; the Fire Official's Review Memorandum, dated June 4, 2021 and the Basking Ridge Fire Company Chief's Review Memorandum, dated June 14, 2021, all to the satisfaction of the Board.

30. Members of the public questioned Ms. Mueller regarding tree removal and lighting; the date on which the aerial photograph in Exhibit A-7 was taken; the current condition of vegetative buffering and whether a sound study would be completed; whether valet/offsite parking

⁴ Technically, the Applicant proposes 88 parking spaces because the inclusion of three "make ready" electric vehicle charging stations, pursuant to N.J.S.A. 40:55D-66.20.3.e "shall count as at least two parking spaces for the purpose of complying with the minimum required parking space requirement."

is proposed, the parking stall size; the anticipated construction timeframe; the safety of current patio; and whether ingress/egress would be modified.

31. At the October 6, 2021 hearing, the following exhibits were entered into evidence:

- **Exhibit A-9:** Generac Generator Specs – Guardian Series, 20 kw, 3-phase, standby generator;
- **Exhibit A-10:** Building Elevations, Sheet 2 of 2, last revised September 23, 2021, prepared by the Martinson Group;
- **Exhibit A-11:** Landscape Plan with Aerial Photograph revised October 6, 2021, prepared by Bosenberg & Company, Inc.; and
- **Exhibit A-12:** PowerPoint presentation dated September 22, 2021, prepared by Michael Tobia.

32. Jim Mazzucco, L.L.A., having a business address of 350 Main Street, Suite 8, Bedminster, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of landscape architecture.

33. Mr. Mazzucco described the existing landscape buffers and how they will be augmented with other plantings, including evergreens, to enhance the landscape buffering. In addition, a solid fence will be installed along the existing residences to the rear of the Site. Referencing Exhibit A-11, he explained that the aerial photograph was updated (previously shown on Exhibit A-8) and that it had been taken in July of 2021. In response to the Environmental Commission's Review Memorandum, dated May 25, 2021, Mr. Mazzucco stated that the Applicant would stipulate to incorporating more native plant species into the proposed landscape buffer.

34. John R. Corak, P.E., having a business address of 92 Park Avenue, Rutherford, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of traffic engineering. Mr. Corak discussed the findings of the

egress/ingress traffic study and parking assessment he had done. He explained that, since there had been a restaurant on this property for many years, he not only looked at the impact the new restaurant would have on the neighborhood, but also compared the proposed conditions to what had previously existed. Mr. Corak concluded that there will be no change in traffic intensity, since the seating capacity in the new restaurant will remain unchanged at 215 seats. He added that the New Jersey Department of Transportation (“NJDOT”) also concluded that there would not be any appreciable increase in traffic. On questioning, Mr. Zelley confirmed that no written report containing Mr. Corak’s findings had been submitted with the application, because there were no actual trip counts or level of service evaluations performed given that no increase in traffic was anticipated by Mr. Corak.

35. Mr. Corak testified that the revised parking area will improve onsite circulation and increase the number of parking spaces from 83 spaces to 85 spaces. He opined that using the total gross floor area/square footage to determine the required number of parking stalls is inaccurate because, based on the size of the building, just under 200 parking spaces would be required for the 215 seats proposed. In addition, he contended that providing so many parking spaces would result in a significant increase in impervious coverage and most, if not all, of the existing vegetation would have to be removed. Mr. Corak opined that, since the previous restaurants on the Property had operated without any parking issues, the proposed restaurant, although larger in floor area, should function similarly given the proposed number of seats and parking stalls. He confirmed that the Applicant will provide three (3) “make-ready” parking stalls for electric vehicle charging.⁵

⁵ Technically, the Applicant proposes 88 parking spaces because the inclusion of three “make ready” electric vehicle charging stations, pursuant to N.J.S.A. 40:55D-66.20.3.e “shall count as at least two parking spaces for the purpose of complying with the minimum required parking space requirement.”

36. On discussion, Mr. Zelley stipulated that all of the parking for the restaurant would remain onsite and that, if that could not be accommodated, the Applicant would return to the Board. He clarified that, if, for example, valet services were proposed and required off-site parking, same would require further approval from the Board. Members of the public questioned Mr. Corak concerning his testimony regarding the overall seating capacity; total number of vehicles that could be accommodated if valet service is provided; whether parking on residential streets would be permitted; the anticipated impact on traffic and safety along Morristown Road; how the prohibition against street parking could be enforced; the number of employees; whether the outdoor dining area is safer because the building was shifted farther back from the right-of-way; and the parking requirements under both the square footage calculation and the seating capacity calculation.

37. Mr. Mazzucco was re-called and addressed the comments under his purview in Mr. Quinn's Review Memorandum, dated June 16, 2021, Mr. Schley's Review Memorandum, dated June 15, 2021, and the Environmental Commission's Review Memorandum, dated May 25, 2021, to the satisfaction of the Board.

38. Members of the public questioned Mr. Mazzucco regarding potential options for alternate buffer plantings, such as evergreens; the proposed tree removal and landscaping along the front of the building; and the size of the arborvitae and junipers being planted and proposed fence materials.

39. Michael J. Tobia, P.P., having a business address of 92 Overlook Road, Morristown, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of professional planning.

40. Referencing Exhibit A-12, Mr. Tobia provided an overview of the existing and proposed conditions, along with all of the requested variance relief. He initially contended that the

project qualifies for subsection d(2) variance relief for the expansion of a nonconforming use, rather than subsection d(1) use variance relief for a new nonconforming use, because the Property was previously improved with a non-conforming restaurant use.

41. On questioning, Mr. Tobia conceded that the Applicant's proposal requires the removal of the existing structure (beyond mere partial destruction) and the construction of a new, larger, structure located in a different location on the Property. On further questioning, Mr. Tobia conceded that the Board was correct in requiring the Applicant to prove an entitlement to subsection d(1) use variance relief, rather than subsection d(2) variance relief. As such, Mr. Tobia provided testimony on behalf of the Applicant to attempt to satisfy the statutory requirements under both N.J.S.A. 40:55D-70d(1) and d(2). He also provided testimony in an effort to satisfy the requisite bulk variance and design exception relief.

42. As to the subsection d(2) variance relief for the expansion of a pre-existing non-conforming use, Mr. Tobia contended that some of the existing conditions are being replicated in the proposed conditions, such as the number of seats (215), the number of parking spaces, and the general location of the building. He contended that the proposal includes significant improvements, such as a building that complies with the Uniform Construction Code requirements, more efficient on-site circulation and parking, improved lighting conditions, expanded ADA access, as well as new HVAC systems that will improve the air quality within the restaurant. Mr. Tobia explained that, since the Covid-19 pandemic, patrons are more concerned about having additional space between tables and improved ventilation.

43. As to the subsection d(1) use variance proofs, Mr. Tobia contended that the Applicant had demonstrated "special reasons" because the Site was particularly suited for the proposed restaurant use. He contended that the Site has been improved with a restaurant for

approximately 91 years “without issue.” Mr. Tobia further contended that, if the Applicant’s proposal is denied, the restaurant use likely will be continued. Mr. Tobia contended that the Site is particularly well suited given its location on a major right-of-way adjacent to commercial uses, such as offices, a day school, and utility buildings. He further contended that the Site is three (3) times larger than the minimum required lot area, and that same allows the Applicant to provide adequate parking, improved buffering and fencing, and a more spacious building. Mr. Tobia testified that the neighbors have lived with a restaurant use for many years, and that the proposal would not significantly change the existing conditions. He reminded the Board that the Applicant anticipates that the restaurant will be a high-end restaurant and will not attract patrons interested only in drinking at the bar, since the average price of a shot of tequila will range between \$20 to \$40. Mr. Tobia noted that there are only 27 seats in the bar area, and that the Applicant had previously stipulated that patrons would not be able to order alcoholic drinks without also ordering food.

44. On questioning as to whether the Applicant could satisfy the heightened standard of proof for the negative criteria for the subsection d(1) use variance, as set forth in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), Mr. Tobia contended that this is a unique situation, because a restaurant has been on the Site for many years, and if the Applicant were to request a rezoning of the Property, it likely would constitute spot zoning.

45. As to the positive criteria for the requested bulk variance relief for the number of parking spaces, insufficient front-yard setback and buffer between the residential properties, the overall signage, the location of the sheds, and the impervious coverage, Mr. Tobia contended that same could be granted pursuant to N.J.S.A. 40:55D-70(c). He further contended that granting the requested relief would advance the purposes of the Municipal Land Use Law (“MLUL”) set forth

in subparagraphs (a), (c), (g), (i), and (m) of Section 2 thereof. Mr. Tobia opined that the benefits of granting the requested relief would substantially outweigh the relatively modest detriment associated therewith. He contended that the Applicant had satisfied the positive criteria for the requested relief.

46. As to the negative criteria for the requested bulk variance relief, Mr. Tobia testified that the proposal will not result in substantial detriment to the public good or substantial impairment of the Master Plan or Zoning Ordinance. He opined that the proposed restaurant use is a legally existing non-conforming use that could remain, but that same would not provide as much of a benefit to the community because the existing building is substandard. Mr. Tobia further opined that a new building would not result in substantial detriment to the public good, particularly since the proposal includes significant improvements to the existing on-site conditions that would not be provided if the existing building were to be renovated. Mr. Tobia noted that the proposal will preserve the existing character of the neighborhood and achieve balance between the commercial and residential uses. He opined that the proposal advances the goals set forth in the Master Plan and, for the aforementioned reasons, he contended that the Applicant satisfied both the positive and negative criteria.

47. Members of the public questioned Mr. Tobia regarding the aerial photographs submitted and the current zoning; whether there would be an ADA compliant bathroom on the second floor; whether the existing sheds would be removed; whether tree removal is proposed and whether the architecture is consistent with the neighborhood; whether the closing time could be earlier than 1:00 AM; and whether there is sufficient parking proposed.

48. Members of the public were duly sworn according to law and made the following public comments:

- John Salaki, 114 Morristown Road, commented that he has no objection to a restaurant remaining on the Site, but does have an objection to the proposed architecture. He expressed concern that the new building would have a detrimental impact on property values. Mr. Salaki expressed further concern that the proposed hours of operation will encourage drinking after the kitchen has closed and that same will create unsafe conditions given the restaurant's location on a major right-of-way. Mr. Salaki suggested that the hours of operation be modified.
- Rose A. Salaki, 114 Morristown Road, expressed her concerns that the proposed architecture is not consistent with the neighborhood and that the restaurant would be a nuisance given the limited landscape screening, particularly during the winter. Ms. Salaki testified that she does not object to a restaurant use, but, instead, objects to the proposed architectural design of the restaurant.
- Stacy Molinari, 27 Franklin Drive, commented that she believes the increased size of the building and the proposed two bars will attract large crowds. She expressed concern that the increase in customers will mean more vehicles and that the existing parking lot will be unable to accommodate same. Ms. Molinari suggested that the size of the restaurant be reduced so additional parking could be provided. She expressed further concern that the proposed outdoor dining areas will have a detrimental impact on the residential neighbors. Ms. Molinari requested that the Board take note that, throughout all of the hearings, numerous members of the public participated and objected to the proposal.
- Thomas Callari, 19 Franklin Drive, expressed his concern that the proposal would not be consistent with the neighborhood and would have a significant detrimental impact on the residences in the neighborhood.
- Ruchika Hira, 89 Morristown Road, commented that there are numerous small children in the neighborhood and that the proposal could create unsafe conditions, particularly given the limited screening. She expressed further concern that the restaurant would have a detrimental impact on the character of the neighborhood.
- Frederick Dour, 28 Franklin Drive, reiterated the concerns expressed by other members of the public and expressed his concern that the Applicant had not provided sufficient testimony as to the number of patrons that can be accommodated at the bar and the Applicant's ability to limit the capacity of the restaurant and bar areas. Mr. Dour noted that the existing restaurant resembles a dwelling, whereas the proposed building would be an architectural anomaly in the neighborhood. He expressed additional concern that the restaurant would be very visible and would have a detrimental impact on the residents' privacy and the character of the neighborhood. Mr. Dour suggested that the traffic will be increased on the Site and that the unique nature of the restaurant may make it a destination restaurant that would attract customers from outside of the immediate area. He opined that the proposal is not consistent with the Master Plan and would result in

substantial impairment of same and it would have a substantial detrimental impact on the neighborhood.

- Susan A. Schlichting, 100 Morristown Road, commented that she has lived across the street from the Property for 40 years and has not had an issue with said use. She testified that she has concerns that the proposed Spanish revival architecture is inappropriate given the existing character of the neighborhood.
- Terrence Gunning, 22 Lone Oak Road, expressed concern about the anticipated impact on the neighborhood, particularly as to traffic, the appearance of the building, and the number of parking spaces being insufficient. Mr. Gunning questioned what would happen to the building if the restaurant were to fail and commented that it would be difficult to repurpose such a building given the proposed architectural design. He expressed further concern about the hours of operation and the impact that that a new, modern, high-end restaurant would have on the character of the neighborhood. Mr. Gunning requested that the Applicant modify the hours of operation so as to ensure the restaurant would not have a detrimental impact on the character of the neighborhood. Mr. Gunning submitted his comments to the Board and introduced same as **Exhibit O-1**.
- Blair R. Hunter, 107 Fieldstone Drive, commented that he has lived at his residence since 1994. He expressed concern that the proposal would result in an influx of vehicles and that the proposed number of parking spaces is not sufficient to accommodate same. Mr. Hunter expressed further concern that patrons who cannot find a parking space will park on the shoulder and that same would create unsafe conditions. He testified that no other restaurants in the area are open until 1:00 AM and that the proposed restaurant and its hours of operation are not consistent with the neighborhood or even other restaurant uses in the Township.
- Ellen Lambert (Kramer), 123 Fieldstone Drive, expressed concern about the proposed hours of operation and the architectural style of the building. She requested that the hours of operation be modified to reduce the impact of the restaurant on the immediate neighborhood.
- Jean Marie Dour, 28 Franklin Drive, appeared via Facetime, without objection from the Applicant's attorney, Mr. Zelley, and she expressed concern about the sewer capacity and the detrimental impact the proposed restaurant will have on property values and the character of the neighborhood. She expressed further concern about the sufficiency of the parking, given the capacity of the building and the anticipated number of employees.
- Keith Molinari, 27 Franklin Drive, objected to the proposal because he does not believe the restaurant will be consistent with the character of the neighborhood. He expressed concern that the restaurant will have a detrimental impact on the neighboring residences, particularly given the hours of operation and the potential capacity given the expansion of the restaurant, including additional space that could

be used for gathering around the bars. Mr. Molinari expressed concern that the proposal would generate additional noise and would have a detrimental impact on the aesthetics of the neighborhood.

- Phillip J. Kane, 21 Fieldstone Drive, expressed concern about whether the Applicant would be a good neighbor.
- Margaret Dolan, 15 Parkview Avenue, commented that she was not opposed to the restaurant use, but is opposed to the architectural design of the building and the hours of operation. She noted that many of the other restaurants in the Township close by 10:00 PM and that the prior restaurant on the Property closed at 9:00 PM, whereas here, the Applicant intends to stay open until 1:00 AM.
- Tanya Silas, 31 Franklin Drive, expressed concern about whether the restaurant would be consistent with the neighborhood. She testified that she is concerned that the restaurant will diminish her privacy.
- Lisa Wagner, 32 Franklin Drive, commented that she has lived at her residence for 10 years and had no objection to the existing restaurant use. She explained that she objects to the proposed building because it is closer to the neighboring residences and will likely generate additional noise and light spillage. Ms. Wagner commented that the proposed number of parking spaces is insufficient to accommodate the proposed expanded restaurant, and it will have a detrimental impact on the character of the neighborhood. In support of her testimony, Ms. Wagner introduced into evidence, as **Exhibit O-2**, a photograph she took in December of 2021 that depicts her view of the restaurant from her house and, as **Exhibit O-3**, a photograph showing that a fence would not provide sufficient screening of the view. On questioning, Ms. Wagner confirmed that the photographs constitute accurate depictions of her property and the restaurant.

Bernadette Mateo (Barrett), 15 Fieldstone Drive, expressed her objection to the proposal and the detrimental impact the restaurant could have on the character of the neighborhood. ⁱ

- John-Claude Hallak, 12 Franklin Drive, commented that he had no objection to the prior restaurant use, but he is concerned that the proposed restaurant will have a detrimental impact on the neighborhood given the extended hours of operation and the architectural design of the restaurant.

49. Upon the completion of public comment, Mr. Zellely provided a summation.

DECISION

50. After reviewing the evidence submitted, the Board, by a unanimous vote of 7 to 0, denied the application in its entirety, finding that the Applicant had failed to satisfy its burden of

proving either the positive, or either of the two prongs of the negative, criteria for the requested use variance pursuant to N.J.S.A. 40:55D-70(d)(1), and further failed to satisfy either the positive, or either of the two prongs of the negative, criteria for the requested bulk variance relief under either N.J.S.A. 40:55D-70(c)(1) or (c)(2), and failed to prove an entitlement to the requisite design exceptions and preliminary and final major site plan approval.

51. The Board initially recognizes that, as in all variance cases, the Applicant bears the burden of proving both the positive and the negative criteria for all of the variance relief requested herein. See, Ten Stary Dom Ptp. v. Mauro, 216 N.J. 16, 30 (2013); Nash v. Board of Adjustment of Morris Tp., 96 N.J. 97 (1984); Cohen v. Borough of Rumson, 396 N.J. Super. 608, 615 (App. Div. 2007); Kogene Bldg. & Dev. v. Edison Tp., 249 N.J. Super. 445, 449 (App. Div. 1991). Moreover, the Board recognizes that the burden of proving the right to the variance relief sought in the application rests at all times with the Applicant. This means that the Applicant has the responsibility to present to the Board the evidence necessary for it to decide, in light of the statutory requirements, the right to the relief sought, and if the Applicant fails to do so, the Board has no alternative but to deny the application. Toll v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223, 255 (2008); Tomko v. Vissers, 21 N.J. 226, 238 (1956); Chirichello v. Zoning Board of Adj. Monmouth Beach, 78 N.J. 544 (1979).

The d(1) Use Variance Relief – Positive Criteria:

52. The Board considers that New Jersey case law recognizes three categories of circumstances in which the “special reasons” required to establish the positive criteria for a use variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer ‘undue hardship’ if compelled to use the property in conformity with the permitted uses in the zone; and

(3) where the use would serve the general welfare because the proposed site is particularly suitable for the proposed use. The Board finds that the Applicant has not demonstrated “special reasons” exist. First, as conceded by the Applicant itself, the proposed use is not inherently beneficial, nor will the Applicant suffer undue hardship if the relief is denied. Moreover, as set forth below, the Applicant has failed to demonstrate that the Property is particularly well suited for the proposed restaurant use and the proposed restaurant structure.

53. Here, the Board recognizes that, while a restaurant use has existed on the Site for many years, the Applicant’s proposal involves the destruction of the existing restaurant structure and the construction of a new, larger restaurant structure, in a different location on the Property, and with an entirely different architectural design (i.e., Spanish revival architecture) and exterior and interior layouts. The Board further recognizes that the Applicant has the right to continue, but not expand, the existing restaurant use in the existing restaurant structure, and that the razing of the entirety of the existing restaurant (beyond more than mere partial destruction) constitutes an abandonment of the pre-existing non-conforming “grandfathered,” rights as to both the non-conforming use and the non-conforming structure. The Board relies on New Jersey appellate courts holding that, there is no question that the total destruction of a nonconforming use, whether by design or accident, terminates the use. Hay v. Bd. of Adjustment of Fort Lee, 37 N.J. Super. 461 (App. Div. 1955) (plan to tear down and replace gas station); Barbarisi v. Board of Adjustment, Paterson, 30 N.J. Super. 11 (App. Div. 1954) (complete destruction of automobile repair shop by fire); D’Agostino v. Jaguar Realty Co., 22 N.J. Super. 74 (Ch. Div. 1952) (complete destruction of factory by fire); DeVito v. Pearsall, 115 N.J.L. 323 (Sup. Ct. 1935) (proposal to tear down greenhouse and replace with larger one). As such, the Board recognizes that, just because a specific restaurant use previously existed in a specific structure and in a specific location on the Property,

does not mean that “special reasons” exist to grant subsection d(1) use variance relief for a different restaurant use in a different structure in a different location on the Property.

54. As to the “particular site suitability” standard, the Board recognizes that, “to support a finding of special reasons, any benefit to the general welfare [must] derive not from the use itself but from the development of a site in the community that is particularly appropriate for that very enterprise.” Saddle Brook Realty, supra, at 78 (quoting Medici, supra, at 18.) Particularly suitable means that ‘the general welfare is served because the use is peculiarly fitted to the particular location for which the variance is sought.’” Price v. Himeji, 214 N.J. 263, 287 (2012). “[I]n the context of the specific parcel, it means that strict adherence to the established zoning requirements would be less beneficial to the general welfare.” Id. at 287.

55. Here, the Board finds that the Applicant has not demonstrated that the Site is particularly suitable for the proposed use in the structure currently proposed. In this regard, the Board recognizes that the Site is zoned residential, and the Board considers that the location of the Site is immediately adjacent to a densely populated family neighborhood. Indeed, the Applicant proposes to locate a new and larger restaurant building closer to the residential neighborhood and immediately behind the rear yards of the homes on the bulb of the Franklin Drive cul-de-sac. Moreover, the Applicant intends to increase the size of the building without a corresponding increase in the number of parking spaces, effectively establishing an indoor/outdoor late-night bar and dining operation with extended hours in the backyard of a family neighborhood.

56. The Board further finds that the proposal does not advance the purposes of the MLUL and, in fact, contravenes the purposes set forth in subsections (a), (c), and (i) in Section 2 of the MLUL. In this regard, the Board finds that the proposal does not promote the general welfare, does not provide adequate light, air and open space, and does not promote a desirable

visual environment, but rather contravenes all of these MLUL enumerated purposes of zoning. In sum, the Board concludes that the Applicant has failed to demonstrate that the Site is particularly suited for the proposed restaurant in the proposed structure in the proposed location on the Property.

57. Based upon the foregoing, the Board finds that the Applicant has failed to satisfy the positive criteria for the requested use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1).

The d(1) Use Variance Relief – Negative Criteria:

58. The Board recognizes that the burden of proof is on the Applicant to satisfy the negative criteria, just as the burden is on the Applicant to satisfy the positive criteria. See, Dallmeyer vs. Lacey Township Bd. of Adjustment, 219 N.J. Super. 134 (Law Div. 1987). As the appellate court stated in Leon N. Weiner vs. Zoning Board of Adjustment, 144 N.J. Super. 509, 516 (App. Div. 1976), certif. den. 73 N.J. 55 (1977), “[i]t was not the burden of the board to find affirmatively that the plan would be substantially impaired (although it did so in the instant case), it was, rather, the burden of the applicant to prove the converse.”

59. The final paragraph of N.J.S.A. 40:55D-70 (emphasis added) provides, in relevant part, as follows:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

60. As such, the negative criteria consist of two elements, both of which a variance applicant must prove; that is, that the proposed development can be accomplished (1) without substantial detriment to the public good, and (2) without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

61. Here, the Board finds that the Applicant failed to prove either of the two elements of the negative criteria, let alone both.

The First Prong - No Substantial Detriment:

62. The Board recognizes that the focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. In Medici v. BPR Co., 107 N.J. at 22-23 n.12 (emphasis added), the Supreme Court explained the substantial detriment phrase as follows:

The first prong of the negative criteria [requires] that the variance can be granted “without substantial detriment to the public good.” In this respect the statutory focus is on the variance’s effect on the surrounding properties. The board of adjustment must evaluate the impact of the proposed use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.”

63. Here, the Board considers the testimony of the multitude of neighboring objectors, all of whom expressed significant (and to the Board well justified) concern regarding, inter alia, the substantially out of character architectural design of the building; the increased size of the restaurant with no corresponding increase in the number of conforming parking spaces; the addition of a second-story outdoor dining terrace to the rear facing the residential neighbors; a proposed second bar area; and the inability of the Applicant to demonstrate that the proposal will not result in substantial detriment to the public good. The neighboring public expressed serious (and to the Board well justified) concern that the restaurant will negatively impact the residential, family character of the neighborhood, destroying their privacy, and threatening traffic safety and the well-being of the immediately adjacent families. While the Applicant stipulated to some conditions of approval which would mitigate the magnitude of the significantly detrimental impact on the neighborhood, the Board finds that said stipulations would not sufficiently mitigate the

detriment, and instead the proposed development still would be substantially out of character with the neighborhood and substantially detrimental to the public good. As such, the Board finds that the Applicant has failed to satisfy its burden of proving the first prong of the requisite negative criteria.

The Second Prong - No Substantial Impairment:

64. The Board recognizes that the focus of the “substantial impairment” prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation by the zoning board of the governing body and planning board authority to zone by way of legislation (i.e., ordinance), rather than by exception (i.e., variance).

65. Here, the Board considers that restaurants are not a permitted use in the R-6 Residential Zone. The Board recognizes that both the Land Use Plan Element of the 2010 Master Plan and the 2019 Master Plan Re-Examination Report include primary objectives of maintaining the character of established neighborhoods and protecting the quality of life in those areas. The Board further recognizes that the 2010 Master Plan also includes the objectives of maintaining and enhancing community character, protecting the integrity of existing neighborhoods, and preventing the intrusion of incompatible development.

66. As to the required “reconciliation” under the standard set forth in Medici, the Applicant also must demonstrate that the omission of the proposed use from the zoning ordinance can be reconciled. The Board must make “clear and specific findings . . . that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.” These findings “must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.” Advance at Branchburg II, 433 N.J. Super. 247, 254 (App. Div. 2013).

67. In the case sub judice, the Board finds that the Applicant cannot reconcile the omission of a restaurant use as a permitted use in the R-6 Residential Zone. Here, the restaurant use and structure pre-existed the current Zoning Ordinance. However, as set forth above, once the existing use and structure are destroyed, the Applicant loses its “grandfathered” right to continue to operate same. The Board further finds that the Applicant failed to demonstrate that the omission of restaurants as permitted uses in the R-6 Residential Zone was due to an oversight or change in circumstances, particularly since restaurants always have been prohibited in the R-6 Residential Zone.

68. As such, the Board finds that the Applicant has failed to demonstrate that the proposal will not result in substantial impairment of the Master Plan and Zoning Ordinance, and hence failed to meet its burden of proving the second prong of the requisite negative criteria.

69. For the reasons set forth above, the Board finds that the Applicant has failed to satisfy either the positive criteria or either of the two (2) prongs of the negative criteria, pursuant to N.J.S.A. 40:55D-70(d)(1). As such, the Board is constrained to deny the requested d(1) use variance relief.

The Bulk Variance and Site Plan Exception Relief and Site Plan Approval:

70. As the Board has denied the requested d(1) use variance relief, it need not opine as to whether the Applicant has demonstrated an entitlement to the subsidiary bulk variance and site plan design exception relief, or the requested preliminary and final major site plan approval. See Cox & Koenig, New Jersey Zoning and Land Use Administration (GANN, 2021), Section 31-5 at p. 687.

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, that the application of **BASTON 95, LLC**, for subsection d(1) use and bulk variance relief, design exception relief, and preliminary and final major site plan approval, as aforesaid, be and is hereby **DENIED**.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 on February 9, 2022.



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

Dated: February 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**MICHAEL and WENDY PORR
Case No. ZB21-028**

RESOLUTION

WHEREAS, **MICHAEL and WENDY PORR** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance relief in connection with (1) the construction of an approximately 16 foot by 34 foot (544 square feet) inground swimming pool and surrounding 1.5 foot wide (159 square feet) bluestone coping; (2) the relocation of an existing shed; and (3) the removal of a 102 square foot portion of the existing driveway, relating to property identified as Block 1611, Lot 48 on the Tax Map, more commonly known as 10 Prospect Avenue (the “Property”):

1. A variance for a proposed side-yard (west) setback to an accessory structure (shed) of 5 feet, whereas the minimum required side-yard setback to an accessory structure in the R-7 Residential Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance (the “Ordinance”)¹;
2. A variance for a proposed rear-yard setback to an accessory structure (shed) of 5 feet, whereas the minimum required rear-yard setback to an accessory structure in the R-7 Residential Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Ordinance²;
3. A variance for a proposed side-yard (west) setback to the pool equipment of 4 feet, whereas the minimum required setback for a private pool (including all buildings, structures, equipment and appurtenances thereto) is 20 feet, pursuant to Section 21-18.1 of the Ordinance; and
4. A variance for a proposed lot coverage of 31.46%, whereas the existing lot coverage is 27.81%, and the maximum permitted lot coverage in the

¹ The Applicants previously obtained variance relief for the non-conforming side-yard setback deviation; however, such relief was conditioned upon the Applicants not increasing the resulting lot coverage beyond 27.81%. As the proposed lot coverage will exceed 27.81%, the Applicants must again obtain such relief.

² The Applicants previously obtained variance relief for the non-conforming rear-yard setback deviation; however, such relief was conditioned upon the Applicants not increasing the resulting lot coverage beyond 27.81%. As the proposed lot coverage will exceed 27.81%, the Applicants must again obtain such relief.

R-7 Residential Zone is 20%, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on January 5, 2022, 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. Board Member Helverson recused himself from hearing the matter and took a seat in the audience.

2. The Property is a slightly narrow (100 feet wide; 125 feet width required), and slightly undersized (19,041 square feet existing; 21,780 square feet required), regularly (rectangular) shaped lot, located in the R-7 (1/2 acre) Residential Zone, with frontage on Prospect Avenue. It is presently improved with a two-story, single-family dwelling, a shed in the rear yard, paver patio, and associated other improvements.

3. The Applicants previously submitted an application for a similar proposal, which was heard by the Board on July 7, 2021 (Case No. ZB21-023), wherein the Applicants sought approval to construct a swimming pool requiring lot coverage and pool equipment setback variances, and also sought approval for an existing shed requiring side and rear setback variances. The Board denied the pool-specific variances and approved the shed-specific variances, subject to various conditions, all as set forth in a resolution adopted on August 4, 2021.

4. The Applicants' current proposal is sufficiently different from their prior proposal in the following ways:

- a. The proposed pool has been reduced in surface area from 672 square feet to 544 square feet;

- b. The proposed bluestone pool surround has been increased in width from 1 foot (116 square feet) to 1.5 feet (159 square feet);
- c. The total proposed lot coverage has been reduced by 85 square feet (0.45%);
- d. The prior proposed ground-level (6 inch high) open wood decking, which was 3 feet wide around the entire pool and extended a distance of 20 feet between the pool and an existing patio, has been eliminated from the proposal; and
- e. The existing shed, which was previously approved with a 3.2 foot side setback and a 2.4 foot rear setback, is now proposed to be relocated to provide 5 foot side- and rear-yard setbacks.

5. The Applicants' proposal is depicted on Plans prepared by Rudolf Holzmann, P.E., of Yannaccone, Villa & Aldrich, LLC, dated July 28, 2020, last revised August 25, 2021, same consisting of three (3) sheets; a Survey prepared by George R. Pronesti, P.L.S., dated May 4, 2007, last revised May 18, 2007, same consisting of one (1) sheet; and a Grading Plan Color Exhibit also prepared by Mr. Holzmann, dated July 25, 2020, last revised August 25, 2021, same consisting of one (1) sheet. The Applicants also submitted a compendium of five (5) photographs of the Property, same consisting of two (2) sheets.

6. The side- and rear-yard accessory setback (shed), pool equipment setback, and lot coverage variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).

7. David Schley, P.P., A.I.C.P, the Board Planner, was duly sworn according to law.

8. Frederick B. Zelle, Esq., of Bisogno, Loeffler, and Zelle, LLC, entered his appearance on behalf of the Applicants. Mr. Zelle described the existing and proposed conditions. He contended that the existing excess coverage is a pre-existing non-conforming condition. Mr. Zelle reminded the Board that the Applicants had previously sought approval for a 672 square foot pool with raised open decking, but that the lot coverage relief relating to the pool was denied. He explained that, in recognition of the Board's prior decision, the Applicants have reduced the

size of the proposed pool by 128 square feet, eliminated the raised deck and replaced it with 1.5 foot wide surround, resulting in a reduction in the magnitude of the requested impervious coverage variance relief from 31.91% to 31.46%. Mr. Zelley advised that the Applicants still propose to remove 102 square feet of existing impervious coverage. He further advised the Board that the Applicant is seeking variance relief for the proposed impervious coverage, as well the proposed pool equipment setback.

9. Mr. Schley advised that the coverage calculations shown on the plans must be revised to clarify that the pre-existing lot coverage is 5,296 square feet, whereas the Existing Lot Coverage table on the plans indicates a total existing coverage of 5,362 square feet, which includes an added 66 square feet for the previously approved shed, however, it does not include an off-setting 66 square foot reduction in coverage as required pursuant to the Board's August 4, 2021 Resolution. He explained that, if the shed is to be included as existing coverage, then an off-setting 66 square foot reduction must also be included.

10. The Board initially considered whether the Applicants' application for development was barred by the legal doctrine of res judicata. Under the doctrine of res judicata, if the same parties or their privies seek essentially the same relief in the same factual setting, the case may require dismissal because it has already been decided by the Board. Russell v. Bd. of Adjustment of Tenaflly, 31 N.J. 58 (1959). The application of the doctrine of res judicata rests on policy considerations such as finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expense; elimination of conflicts, confusion and uncertainty; and basic fairness.

11. Here, the Board found that the subject application sought relief of lesser proportions and otherwise was sufficiently different to justify the Board exercising its discretion to consider

the Applicants' proposal on the merits, rather than reject it on grounds of res judicata. For example, in Tzeses v. Bd. of Trustees of South Orange, 22 N.J. Super. 45, 54-55 (App. Div. 1952), certif. den. 11 N.J. 327 (1953), the first application sought a variance to permit construction of three houses whereas the second application sought a variance to permit construction of only two houses and an entirely different arrangement of the property. The court there held that the second application was not barred by the denial of the earlier application.

12. On questioning as to the prior relief granted, Mr. Schley explained that the Board granted variance relief for the location of the shed, but that such relief was subject to the total lot coverage not exceeding the pre-existing non-conforming lot coverage of 27.81%. He further explained that the August 4, 2021 Resolution required the Applicants to reduce the existing coverage by 66 square feet as a condition of granting the variance relief for the non-conforming location of the shed.

13. Michael and Wendy Porr, the Applicants, having an address of 10 Prospect Avenue, were duly sworn according to law. Mr. Porr testified that the Applicants are no longer proposing to relocate the shed. The Applicants stipulated, as a condition of approval, to revising the plans to clarify that the shed will remain in the existing non-conforming location.

14. Mr. Porr testified that the Applicants reside at the Property with their two children. He confirmed that he had taken the photographs submitted with the application materials on May 30, 2021 and that said photographs constitute an accurate depiction of the Property as it presently exists. Referencing same, Mr. Porr described each of the photographs. He contended that the shed is well screened from the neighbors by the existing landscaping, as well as a 6-foot-tall fence. Mr. Porr further contended that the existing landscaping will also screen the proposed pool and other improvements.

15. On discussion of the proposed pool, Mr. Porr testified that he wants to provide recreation and relaxation opportunities for his family. He explained that the proposed pool is an inground saltwater pool with 1.5 foot wide surround, rather than decking as previously proposed. Mr. Porr testified that the removal of the decking provides additional green space. He further testified that the size of the pool has been reduced and that same will also increase the amount of green space. On questioning, he testified that there will be lighting within the pool itself and that the pool will be constructed on- site as the proposed shell is concrete.

16. Mr. Porr explained that the Applicants are also proposing to remove a 102 square foot portion of the driveway that is not used and to replacing same with grass. He confirmed that the reduction of the driveway will not impact the Applicants' ability to maneuver safely. On questioning, Mr. Porr testified that he had discussed the proposal with his neighbors and all of them expressed support for same.

17. On discussion of the Review Memorandum prepared by the Board Planner, Mr. Schley, dated December 29, 2021, the Applicants stipulated, as a condition of approval, to complying with all of the comments and requirements set forth therein.

18. On discussion of the Review Letter prepared by the Board Engineer, Mr. Quinn, dated January 3, 2022, the Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth therein. As to Comment 7 regarding opportunities to further reduce the coverage, Mr. Porr advised that he did not want to reduce the width of the driveway or modify the patio, but that, if required, the reduction in the width of the driveway would reduce the coverage by 167 square feet.

19. On discussion of the existing coverage calculation, Mr. Schley explained that the proposed additional coverage is 151 square feet (i.e., 85+66), rather than 85 square feet, because

the Applicants had not included the 66 square feet of coverage associated with the shed. Mr. Zelley concurred and advised that the increase in coverage would be 3.65% rather than 3.30% as he had initially proffered.

20. On questioning, Mr. Porr advised that the Applicants are not proposing to remove any portion of the slate walkway because the walkway is frequently used and has existed since the Applicants purchased the Property.

21. On discussion of the September 28, 2021 Review Memorandum prepared by Debra DeWitt of the Environmental Commission, the Applicants stipulated to installing additional stormwater management measures if necessary but contended that same would be unreasonable given the cost and the amount of disturbance and the minimal increase in coverage.

22. On questioning, Mr. Porr confirmed that the gravel swale shown on the plans would be removed and replaced with grass. On discussion of whether the width of the driveway could be reduced, Mr. Zelley suggested that if the Board were to require same as a condition of approval, the Applicants would comply, but requested that such reduction not be required given the substantial cost.

23. Harold Slapin, having an address of 18 Prospect Street, was duly sworn according to law and testified in support of the application. Mr. Slapin testified that he has lived at his residence for 35 years and has known the Porrs for 31 years. He explained that he also has a pool and that same has provided his family with years of enjoyment and requested that the Board grant the requested variance relief so the Porrs could have the same experience.

24. No other member of the public commented on the Applicants' proposal, and no member of the public objected to the application.

DECISION

25. After reviewing the evidence submitted, the Board, by a unanimous vote of 7 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the excess lot coverage, deficient accessory structure (shed) setbacks, and non-conforming pool equipment location, all pursuant to N.J.S.A. 40:55D-70(c)(2).

26. As to the positive criteria for “c(2)” or “flexible c” variance relief, 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. As to the excess lot coverage, the Board notes that the Applicants have reduced the magnitude of the requested relief by reducing the size of the pool and eliminating 102 square feet of existing impervious coverage such that the proposal will only increase the impervious coverage by 3.65%. The Board recognizes that by converting the previously proposed decking into coping, the proposal appears less massive and results in more green space. As to the non-conforming shed setbacks, the Board notes that the shed has existed since 2007, consists of only 66 square feet. The Board further notes that the shed allows the Applicants to store equipment and other materials that would otherwise have to be stored outside, where they would potentially be visible to the adjacent property owners and finds that same provides a benefit to the neighborhood. As such, the Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. The Board recognizes that the proposed improvements will not be visible from the right-of-way and will be screened by the existing landscape buffering. The Board finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. For these reasons, the

Board finds that the Applicants have demonstrated the positive criteria required for variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

27. As to the negative criteria required for all of the requested variance relief pursuant to subsection 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. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will be in character with the existing neighborhood and will not have a negative impact on the surrounding properties. In this regard, the Board recognizes that the pool, existing shed, and associated improvements will be sufficiently screened by the existing landscaping and fencing, and that the conditions stipulated to by the Applicants will further reduce the detrimental impact of the proposed improvements on adjacent properties. The Board notes that one of the neighbors, Mr. Slapin, expressed his support for the proposal. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools and sheds are permitted accessory structures. The Board finds in this regard that the requested deviations are relatively modest in nature and certainly do not rise to the level of constituting a rezoning of the Property. For these reasons, the Board finds that the Applicants have demonstrated the negative criteria for variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

28. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

WHEREAS, the Board took action on this application at its meeting on January 5, 2022, 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 9th day of February, 2022, that the application of **MICHAEL and WENDY PORR**, 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 apply for and obtain a zoning permit for the shed. The zoning permit application shall include a plan and lot coverage calculations which reflect the following, and same shall be subject to the review and approval of the Township Zoning Officer:
 - A. The area adjoining the paved driveway and shown on the Plans as "gravel swale," which is not counted as coverage in the calculations shown on the Plans, shall be replaced with grass or other plantings;
 - B. The labeling of the area between the paved driveway and the wood fence, shown on the Plans as "gravel area," shall be revised to indicate "decorative stone groundcover" or to otherwise clarify that this area is not part of the driveway and not counted as lot coverage;
3. The Applicants shall revise the plans to reflect that the existing shed, which has a side setback of 3.2 feet and a rear setback of 2.4 feet, is no longer proposed to be relocated;
4. The Applicants shall revise the coverage calculations shown on the plans to clarify that the pre-existing lot coverage is 5,296 square feet. The Existing Lot Coverage table on the plans indicates a total existing coverage of 5,362 square feet, which includes an added 66 square feet for the previously approved shed, however, it does not include an off-setting 66 square foot reduction in coverage as required pursuant to the Board's August 4, 2021 Resolution. If the shed is to be included as existing coverage, then an off-setting 66 square foot reduction shall also be included;
5. The Applicants shall revise the plans to clarify that the proposed "rocks/boulders" adjoining the east end of the pool are simply a decorative landscape feature, i.e.

not akin to a patio and not part of the pool and therefore not counted as lot coverage and not subject to a minimum 20' setback;

6. The Applicants and any successors in interest shall be required to return to the Board for further approval if the pool coping is modified or replaced with open wood decking as the elimination of the decking was a significant factor in the Board's decision to grant the requested relief;
7. All proposed lighting in the pool area shall be downward directed or otherwise shielded so that glare, direct light or reflection are not a nuisance to the adjoining properties;
8. Soil erosion and sediment control measures shall be provided in accordance with Section 21-42.11 of the Ordinance. The measures shown on the plans shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit;
9. Soil from the pool excavation shall be removed from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, same to be subject to review and approval by the Township Engineering Department prior to any land disturbance;
10. The zoning schedule and lot coverage calculations shown on the plans shall be subject to further review and approval by the Township Zoning Officer prior to issuance of any permit;
11. The Applicants shall utilize "best management practices" when discharging pool water;
12. The Applicants shall revise the plans to remove the prior revision notes and general notes associated with the previously denied application;
13. The Applicants shall revise the plans to include post-development spot grades that define the drainage paths around the proposed pool improvements and same shall be subject to the review and approval of the Township Engineering Department;
14. The Applicants shall extend the proposed silt fencing along the rear of the Property approximately 20 feet to the west in order to shadow the end of the stabilized construction entrance pad;
15. 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;

16. 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
17. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Amin, 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 on February 9, 2022.



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

Dated: February 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**GANLIN CHANG and HONG WANG
Case No. ZB21-032**

RESOLUTION

WHEREAS, **GANLIN CHANG and HONG WANG** (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 an inground swimming pool within an existing patio area to the rear of the existing dwelling, same to be located on property identified as Block 4301, Lot 25 on the Tax Map, more commonly known as 40 Ridgeview Drive (the “Property”):

A variance to locate an in-ground swimming pool such that it is not behind the rear building line of an adjacent dwelling, 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 January 5, 2022, 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 an undersized, narrow lot located in the R-1 (3 acre) Residential Zone with frontage on Ridgeview Drive. It is presently improved with a two-story dwelling, wood deck, pavers, and associated improvements. The rear portion of the Property is encumbered by a septic field, wetlands and wetland transition areas.
3. The Applicants propose to construct an approximately 15 foot by 32 foot (414

square foot) inground swimming pool within an existing patio area in the rear of the existing dwelling.

4. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Land Development Ordinance, which states “the pool shall be located behind the rear building line of existing residential structures on adjoining lots.” The proposed pool is not to the rear of the adjoining dwelling on Lot 26 (36 Ridgeview Drive) located to the southeast of the Property. The Applicants’ dwelling and the dwelling on adjoining Lot 26 are angled toward each other because both dwellings face the outside curve of Ridgeview Drive. The angled positions of the dwellings, combined with the fact that the dwelling on Lot 26 is situated further back from the right-of-way than most dwellings along Ridgeview Drive, limits the area on the Applicants’ lot where a conforming pool can be located. As such, the Applicants seek variance relief for the proposed pool location.

5. The Applicants’ proposal is depicted on a Variance Plan prepared by Catherine A. Mueller, P.E., dated October 25, 2021, unrevised, same consisting of two (2) sheets and a Survey prepared by John C. Ritt, P.L.S., dated July 1, 2020, unrevised, same consisting of one (1) sheet. The Applicants also submitted a compendium of four (4) photographs of the Property.

6. The pool location variance is governed by the criteria of N.J.S.A. 40:55D-70(c).

7. David Schley, P.P., A.I.C.P, the Board Planner, was duly sworn according to law.

8. Hong Wang, one of the Applicants, having an address of 40 Ridgeview Drive, was duly sworn according to law.

9. Catherine A. Mueller, P.E., having a business address of P.O. Box 4619, Warren, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of civil engineering. Ms. Mueller testified that the Applicant is

seeking variance relief for the installation of a 414 square foot inground fiberglass pool not located behind the rear building line of existing residential structures on adjacent lots. She explained that if the Applicants were to locate the pool in a conforming location, it would be significantly set back from the dwelling. Ms. Mueller testified that the pool equipment will be located in a conforming location and that the only increase in the impervious coverage relates to the pool equipment and the coverage does not exceed the maximum permitted coverage allowance.

10. The Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth in the December 29, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley, and the January 3, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn.

11. On questioning, Ms. Mueller opined that the pool will be adequately screened by the existing landscape, and she confirmed that the Applicants are not proposing to remove any of the existing vegetation. She explained that the pool will fit within the existing patio footprint and that, once it is constructed, the Applicants may add additional plantings.

12. On questioning as to whether the pool could be located in a conforming location, Ms. Mueller explained that there is a small corner of the Property that would be compliant, but that same would result in the pool being a significant distance from the dwelling, as well as requiring additional grading and impervious coverage. On questioning, Ms. Wang confirmed that her immediately adjacent neighbors had no objections to the proposal. On further questioning, Ms. Mueller confirmed that the pool fence will comply with the Ordinance requirements.

13. On questioning, Ms. Wang testified that the photographs submitted with the application were taken by her in November of 2021, and that they accurately depict the Property as it presently exists.

14. On discussion of the proposed landscape buffering, Mr. Schley advised that any additional screening would be supplemental to the existing screening, and he suggested that the sufficiency of the screening be reviewed by the Township Engineering Department. The Applicants stipulated to complying with any reasonable recommendations from the Township as to additional landscape screening. On questioning, Ms. Wang testified that the pool itself has lighting, and that no additional lighting is proposed. On further questioning, she confirmed that the existing playground area will remain.

15. No member of the public commented on, or objected to, the Applicants' proposal.

DECISION

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

17. As to the positive criteria for the "c(1)" or "hardship" variance for the requested pool location deviation, 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. The Board finds that the exceptionally unique physical features affecting the Property include the layout and configuration of Property, the location of the Property along a curved portion of the Ridgeview Drive right-of-way, the location of the adjacent dwellings, and the existing septic field, wetlands, and wetland transition areas. The Board recognizes that the proposed pool is not to the rear of the adjoining dwelling on Lot 26 (36 Ridgeview Drive) to the southeast. The Board further recognizes that, in order to conform to the pool location requirement,

the pool would have to be located within a sloped, grassed area approximately 80 feet south of the proposed location, which would be over 100 feet from the dwelling, and locating the pool in said location would result in additional disturbance and safety concerns due to limited visibility of the pool from the dwelling. As such, the Board finds that the Applicants have demonstrated that granting the requested variance from such strict application of the regulations is warranted so as to relieve the Applicants from such exceptional difficulties or undue hardship.

18. The Board further recognizes that the legislative intent underlying the pool location ordinance was to locate more active uses in rear yards and to “line up” rear yard uses for adjacent neighbors. The Board concludes that requiring the Applicants to comply with the pool location requirement would not serve the intent of the pool location ordinance any better than it would be served by locating the pool in the location proposed by the Applicants. The Board further finds that the hardship that would result from the strict application of the zoning ordinance provision would not be by virtue of a condition that was “self-created” by the Applicants or any predecessor-in-title.

19. As to the positive criteria for “c(2)” or “flexible c” variance relief for the pool location deviation, 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 requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that the proposed pool will be screened by the existing and proposed landscaping, as well as the dwelling itself. The Board further recognizes that locating the proposed pool in a conforming location would require additional disturbance, additional tree removal, and would

generally restrict the Applicants' ability to monitor their children. As such, 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.

20. As to the negative criteria required for variance relief pursuant to 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.

21. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will be in character with the existing neighborhood and will not have a negative impact on the surrounding properties. In this regard, the Board recognizes that many of the adjacent neighboring properties are also improved with pools, that the pool will be sufficiently screened both by the existing and proposed landscaping, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. The Board further recognizes that the proposed pool will be located on an existing patio area, thereby reducing the amount of impervious coverage that would otherwise be required.

22. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools are permitted accessory structures. The Board finds in this regard that the requested deviation is relatively modest in nature and certainly does not rise to the level of constituting a rezoning of the Property.

23. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested bulk variance 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 January 5, 2022, 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 9th day of February, 2022, that the application of **GANLIN CHANG and HONG WANG**, 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 a tree protection plan (and a tree removal and replacement plan, if it becomes applicable), same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (3) The Applicants shall submit a landscape plan, same to be subject to the review and approval of the Township Planner. If additional landscaping is recommended to provide sufficient buffering of the pool from adjacent Lot 26, the Applicants shall provide same in accordance with the reasonable requests of the Township Planner;
- (4) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (5) Soil from the pool excavation shall be removed from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (6) The Applicants' environmental consultant shall verify and/or update the wetlands delineation shown on the plans, and all wetlands and wetlands transition areas shall be contained within a wetlands conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, executed by the Applicants, and recorded with the Somerset County Clerk prior to issuance of a construction permit. The easement boundary shall be delineated with Township standard markers, which shall be bonded prior to issuance of a construction permit and installed prior to issuance of a certificate of occupancy;

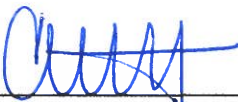
- (7) Soil erosion and sediment control measures shall be provided in accordance with Section 21-42.11 of the Ordinance. The measures shown on the plans shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit;
- (8) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (9) The Applicants shall revise the plans to depict a realistic limit of disturbance area that accounts for the larger disturbance associated with the construction entrance and soil movement and same shall be subject to the review and approval of the Township Engineering Department;
- (10) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (11) The 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
- (12) 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: Genirs, Helverson, 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 February 9, 2022.



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

Dated: February 9, 2022.