

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v2  
Regular Meeting  
March 9, 2022

### **CALL TO ORDER**

Chairwoman Genirs called the meeting to order at 7:32 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: Baumann, Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi  
Members Absent: NONE  
Members Late: Amin (7:36 PM)  
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

### **APPROVAL OF MINUTES**

February 9, 2022 – Regular Session - On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted. Ineligible: Mr. Cambria (absent)

### **APPROVAL OF RESOLUTIONS**

Birkhold, A./Kostinas, L.; Block 3901, Lot 58; 33 Springhouse Lane; ZB21-033 (approved) – Ms. Baumann moved approval of the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

Heymann, F./Chiclana, M.; Block 2905, Lot 1; 24 Woodstone Road; ZB21-034 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

Fetchko, Michael E. & Amy H.; Block 1204, Lot 11; 103 Washington Avenue; ZB21-035 (approved) – Mr. Kraus moved approval of the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

B3 Church Street LLC; Block 7501, Lot 15; 15 Church Street; ZB21-036 (approved) – Ms. Baumann moved approval of the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

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

#### **COMPLETENESS AND PUBLIC HEARING**

Nash, David & Michelle; Block 7901, Lot 8; 61 Archgate Road; Bulk Variance; ZB21-037

Present:	Jonathan E. Booth, RA, Architect for the Applicants
	David Nash, Applicant

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

David Nash, Applicant residing at 61 Archgate Road, testified that the proposed project, removal of an existing open front portico and construction of a new one-story open front porch on the existing dwelling, requires relief for encroachment into the front yard setback. He stated that no concerns about the project had been voiced by the neighbors.

Jonathan E. Booth, RA, architect with a business address of 33 Bullion Road, Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture and gave a brief description of the subject property. He opined that if the proposed new porch was conforming, it would be too narrow and not meet the Applicants' objective which is to provide a gathering area for family and friends. Although the side of the house does offer a conforming location, if built there, the porch would have a greater impact on the adjacent neighbor. He added that several utilities are also located there. Finally, he testified that he had taken the pictures submitted with the application sometime in February and that they accurately depict the property as it currently exists.

The comments in Mr. Schley's memo dated 03/04/2022 and Mr. Quinn's memo dated 03/07/022 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. Geoffrey G. Yochum, residing at 58 Penwood Road, was duly sworn and spoke in favor of the application. Hearing nothing further from the public, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variance relief. 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 variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Baumann seconded.

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

Motion carried.

Mr. Cambria returned to the dais.

#### **COMPLETENESS AND PUBLIC HEARING**

Bhatia, K./Shah-Bhatia, N.; Block 11201, Lot 23; 11 Parkwood Lane; Bulk Variance; ZB21-038

Present:	Kshitij Bhatia & Niyati Shah-Bhatia, Applicants
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Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Mr. Bhatia, Ms. Shah-Bhatia, Mr. Quinn and Mr. Schley were duly sworn.

Kshitij Bhatia, Applicant residing at 11 Parkwood Lane, testified that the proposed project includes removal of an existing rear yard patio and wood deck and construction of an inground pool, surrounding walkways/patio and a covered porch over a portion of the proposed patio in the location of the existing deck. The project requires relief for the location of the pool (not behind the rear building line of adjacent dwellings) and for encroachment into the western side yard setback (covered porch). Mr. Bhatia stated that because the dwelling to the east on Lot 24 (19 Parkwood Lane) is angled towards the subject dwelling and also because the front of the dwelling on the property to the south of his property (173 Somerville Road, Block 11201, Lot 20) faces his back yard, there is no conforming location for a pool. He felt that the proposed location would allow for safe access from the house and that the existing vegetative screening between his property and Lots 24 and 20 is adequate, noting that none of the neighbors had voiced concern over the project or the adequacy of the screening. Finally, he stated that the existing house encroaches further into the side yard setback than the proposed porch roof (the house was built prior to 1999 when the minimum side yard requirement increased from 20' to 50') and that the location had never caused an issue.

The comments in Mr. Schley's memo dated 03/04/2022, Mr. Quinn's memo dated 03/07/022 and the Environmental Commission's (EC's) memo dated 03/08/2022 were addressed to the satisfaction of the Board and its professionals. Mr. Bhatia stipulated to using native species if additional vegetative screening is required.

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 "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" 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 variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Cambria seconded.

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

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Yochum, Geoffrey G. & Michelle A.; Block 6701, Lot 17; 58 Penwood Road; Bulk Variance; ZB22-001

Present:	Jonathan E. Booth, RA, Architect for the Applicants
	Geoffrey G. & Michelle A. Yochum, Applicants

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

Michelle A. Yochum, Applicant residing at 58 Penwood Road, testified that the proposed project, construction of a one-story kitchen addition to the rear, westerly corner of the existing dwelling and expansion of an existing rear deck, requires relief for exceeding the maximum allowable lot coverage. She stated that the proposal would create a more spacious kitchen/dining area for family dinners and gatherings.

Jonathan E. Booth, RA, architect with a business address of 33 Bullion Road, Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture. He gave a brief description of the property and advised the Board that he had taken the pictures submitted with the application sometime in late December and that they accurately depict the property as it currently exists. Noting that the proposed addition is conforming as far as the property setbacks are concerned, he confirmed that the only relief required is for lot coverage. He testified that due to improvements done by previous owners (all with Township approval), the coverage on the property exceeded the maximum allowed when the Yochums purchased it. Mr. Schley explained that an older survey of the property showed that the property was 500 sq. ft. bigger than it actually was so the past improvements appeared to be conforming. When the current survey was done, the mistake in the square footage was corrected, resulting in a correction in the total lot coverage percentage.

A discussion ensued about the existing hot tub and pergola which appeared on aerial photos but were not included in the lot calculations submitted with the application. Mr. Booth testified that those items raised the lot coverage percentage to 16.56% where 15% is permitted.

**Exhibit A-1**, four (4) color photos on an 8.5" X 11" sheet of paper of an existing "Rubbermaid" shed was entered into evidence. Mr. Yochum confirmed that the shed is located within the rear yard setback however, he opined that if it was relocated to a conforming location, it would be much more visible to the neighbors. Noting that he had never had any complaints about the shed's current location, he asked that variance relief for an accessory structure (shed) encroaching into the rear yard setback be added to his application.

The comments in Mr. Schley's memo dated 03/04/2022, Mr. Quinn's memo dated 03/07/2022 and the EC's memo dated 03/08/2022 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. David Nash, residing at 61 Archgate Road, was duly sworn and spoke in favor of the application. Hearing nothing further, 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 "(c-2)" or "benefits outweigh detriments" 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 variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

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

Motion carried.

#### **COMPLETENESS AND PUBLIC HEARING**

Maloney, Karl & Sharon; Block 9501, Lot 29; 109 Woodman Lane; Bulk Variance; ZB22-003

Present:	Dixon Munds, Contractor for the Applicants
	Sharon Maloney, Applicant

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

Sharon Mahoney, Applicant residing at 109 Woodman Lane, testified that the proposed project, construction of an inground pool, spa, patio/walkways and shade pavilion, requires relief for the location of the pool (not behind the rear building line of adjacent dwellings). She added that she had taken the pictures that were submitted with the application sometime in February and that they accurately depict the property as it currently exists.

Dixon Munds, owner of Paradise Pools and Spas, testified that because Woodman Lane curves, the dwelling on adjacent Lot 30 (121 Woodman Lane) is angled toward the subject dwelling and the proposed pool would have to be located much farther back on the property and entirely within a wetlands transition area in order to comply with the ordinance. He confirmed that the Applicants would implement stormwater management measures as required and that the existing screening between the subject lot and Lot 30 would be supplemented.

The comments in Mr. Schley's memo dated 03/04/2022, Mr. Quinn's memo dated 03/07/2022 and the EC's memo dated 03/08/2022 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. No summation was offered.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for c(1)" or "hardship" and "(c-2)" or "benefits outweigh detriments" variance relief. Mr. Kraus moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision

to grant the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Tancredi seconded.

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

Motion carried.

**COMMENTS FROM MEMBERS OR STAFF**

Ms. Kiefer reminded the Board that Application ZB21-031 Finley Real Estate LLC is scheduled for a hearing on Thursday, March 17, 2022.

**ADJOURN**

Moved by Mr. Tancredi, seconded by Ms. Baumann, all eligible in favor and carried, the meeting was adjourned at 9:36 PM.

Respectfully submitted,

*Cyndi Kiefer*

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as written 04/06/2022*

03/15/2022 dssw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ADAM BIRK HOLD and LAUREN KOSTINAS  
Case No. ZB21-033**

**RESOLUTION**

WHEREAS, **ADAM BIRK HOLD and LAUREN KOSTINAS** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variances, in connection with the construction a 765 square foot second floor addition on top of an existing one-story/garage portion of an existing dwelling, and additional lot coverage associated with a rear patio that was installed by prior owners without approvals, relating to property identified as Block 3901, Lot 58 on the Tax Map, more commonly known as 33 Spring House Lane (the “Property”):

1. A variance for a proposed lot coverage of 21.69%, whereas the maximum permitted lot coverage in an RC-4 Residential Cluster Zone is 20%, pursuant to Section 21-15.1(d)(3) and Table 503 of the Land Development Ordinance; and
2. A variance for a proposed floor area of 4,033 square feet, whereas the existing floor area is 3,268 square feet and the maximum permitted floor area for this lot which is located in an RC-4 Residential Cluster Zone is 3,311 square feet, pursuant to Section 21-32.3 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on February 9, 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 a 29,868 square foot (0.69 acre) irregularly shaped lot fronting on Spring House Lane. The Property is presently improved with a two-story, single-family dwelling, with a rear patio, playset, and associated walkways and driveway.

3. The Applicants seek approval to construct a 765 square foot second floor addition on top of an existing one-story/garage portion of the existing dwelling. The addition includes a lounge/bar area and two bedrooms with private bathrooms. The Applicants also seek 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.

4. The Property is located in an RC-4 Residential Cluster Zone. The requested variances for the floor area and lot coverage deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

5. The Applicants' proposal is depicted on Architectural Plans prepared by Dean A. Andricsak, A.I.A., dated June 18, 2021, unrevised, same consisting of five (5) sheets; and a Survey prepared by Gregg A. Gaffney, P.L.S., dated November 9, 2022, unrevised, same consisting of one (1) sheet. The Applicants also submitted a compendium of twelve (12) photographs, same consisting of twelve (12) sheets.

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

7. Frederick Zelley, Esq., of Bisogno, Loeffler & Zelley, LLC, 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 summarized the Applicants' proposal and the requested relief. Noting that the maximum allowable floor area and impervious coverage are determined by the size of the property, Mr. Zelley contended that a hardship exists

given the relatively small size of the 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.

8. Dean A. Andricsak, A.I.A., having a business address of P.O. Box 578, Martinsville, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. He described the Property and surrounding neighborhood, and he testified that the proposed addition, a lounge/bar area and two (2) bedrooms with private bathrooms, would provide an area for the Applicants' parents to stay during the holidays. Mr. Andricsak stipulated, as a condition of approval, that there would be no separate outside egress/ingress or cooking facilities. The Board discussed requiring a deed restriction to prohibit any future owner from converting the proposed addition to a separate dwelling unit. Ultimately, the Board decided not to require the deed restriction.

9. Mr. Andricsak introduced into evidence, as **Exhibit A-1**, a compendium of three (3) 8-1/2" by 11" color aerial photographs (Google Earth dated 2018, 2013, and 2007). He noted that the rear patio appears in all three photographs, and that this fact demonstrates that the patio has existed since prior to the Applicants' purchase of the Property. He estimated that the patio had been installed in approximately 2006 or 2007. Mr. Andricsak opined that stormwater management measures would have been included and constructed as part of the patio project. He explained that the Applicants are requesting a waiver from the stormwater management measures, because they are not aware of any stormwater runoff issues associated with the patio.

10. On discussion of the stormwater management measures, Mr. Quinn suggested that, if there is an existing drywell, it should be sufficient to accommodate the stormwater runoff, but that if there is not a drywell, then the Applicants either could install a small impound in the front yard or ensure that the downspouts connect to the existing inlet in the street. On further



discussion, 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.

11. Mr. Zelley contended that the Applicants had satisfied both the positive and the negative criteria for the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

12. Todd Edelstein, having an address of 172 Riverside Drive, was duly sworn according to law. Mr. Edelstein concurred with Mr. Quinn's suggestion regarding confirming the existence of sufficient stormwater management measures.

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

### **DECISION**

14. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief, under both of the alternative bases set forth in N.J.S.A. 40:55D-70(c)(1) and (c)(2).

#### **The Subsection (c)(1) Bulk Variance Relief – Positive Criteria**

15. As to the positive criteria for (c)(1) or "undue hardship" variance relief for excess lot coverage and floor area, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. Here, the Board recognizes that, given the relatively narrow nature of the Property in this residential cluster zone, it is difficult for the Applicants to construct reasonable residential site improvements and amenities, such as the proposed addition, without requiring impervious

coverage and floor area variance relief. Additionally, the Board finds that the undue hardship that would be incurred by the Applicants if the zoning regulation were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(1).

**The Subsection (c)(2) Bulk Variance Relief – Positive Criteria**

16. 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. The Board finds that the addition promotes a desirable visual environment, enhances the housing stock, and otherwise promotes the general welfare.

17. In this regard, the Board notes that the proposed floor area exceeds the maximum permitted floor area by 722 square feet (21.8%), and that the addition is confined to the existing dwelling footprint. The Board recognizes, as testified to by the Board Planner, Mr. Schley, that it is not uncommon to have a dwelling in the Residential Cluster Zone with an excessive floor area, and because the floor area limit in the Residential Cluster Zone is based on lot width, the primary intent is to minimize the visual impact on the streetscape. The Board further finds that, since the proposed addition would not increase the footprint of the dwelling or increase the height of the dwelling, the addition would not offend the intent of the floor area limitation. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(2).

### **The Subsection (c)(1) and (c)(2) Bulk Variance Relief – Negative Criteria**

18. The Board further finds that the Applicants have satisfied the negative criteria; that is, they have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Master Plan and Zoning Ordinance. As to the “substantial detriment” prong of the negative criteria, the Board finds, based upon historical aerial images of the Property, the currently configured patio has existed since at least 2006 – prior to the purchase of the Property by the Applicants. As such, the Board further recognizes that the current conditions have existed without creating any issue and that requiring the Applicants to remove the additional coverage would be punitive since the additional coverage does not result in a substantial detrimental impact on the existing neighborhood. Moreover, the Board considers that there was no public opposition and no objection from the adjacent neighbors. As to the “substantial impairment” prong of the negative criteria, the Board further finds that the proposal does not substantially impair the Master Plan or Zoning Ordinance because the intent of the regulations of the Residential Cluster Zone is met. As such, the Board finds that the Applicants have satisfied both the positive and negative criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

### **The Waiver Relief:**

19. As to the Applicants’ request for a waiver from the stormwater design standards set forth in Section 21-42.11.b, the Board finds that, in accordance with Section 21-42.12 of the Land Development Ordinances, meeting the standards would result in an exceptional hardship on the Applicants. In this regard, the Board notes that the Applicants have 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.

WHEREAS, the Board took action on this application at its meeting on February 9, 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 March, 2022, that the application of **ADAM BIRK HOLD and LAUREN KOSTINAS**, 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 exterior of the proposed addition shall be substantially similar in color, material, and architectural components to the balance of the exterior of the dwelling;
3. The Applicants shall confirm that the downspouts connect to an existing inlet and that, if they are not connected, the Applicants shall either (1) connect them, (2) install alternative stormwater runoff mitigation measures, same to be reviewed and approved by the Township Engineering Department, or (3) remove some of the existing coverage so that the increase in coverage resulting from the patio construction is less than 1,000sf, same to be subject to the review and approval of the Township Engineering Department;
4. The Applicants shall obtain an engineering permit prior to any work within the Spring House Lane right-of-way.
5. The Applicants shall not convert the proposed addition to a separate dwelling unit (i.e., no cooking facilities or separate entrance shall be installed therein);
6. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;

7. The 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
8. 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 variances has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor:                      Baumann, 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 March 9, 2022.

*Cyndi Kiefer*

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

Dated: March 9, 2022.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**FREDERICK HEYMANN and MARIA CHICLANA  
Case No. ZB21-034**

**RESOLUTION**

WHEREAS, **FREDERICK HEYMANN and MARIA CHICLANA** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking the following variance relief, in connection with (1) the construction of a roof that connects an existing detached two-car garage to an existing dwelling located approximately 10 feet away therefrom, and (2) the non-conforming location of an existing shed, on property identified as Block 2905, Lot 1 on the Township Tax Map, more commonly known as 24 Woodstone Road (the “Property”):

- (1) A variance for a proposed lot coverage of 22.4%, whereas the existing/approved lot coverage is 17.81%, and the maximum permitted lot coverage in the R-6 (3/4 acre) Zone is 18%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”)<sup>1</sup>;
- (2) A variance for a side-yard setback (south) of 15.9 feet, whereas the existing side-yard setback is 16.3 feet, and the minimum required rear-yard setback in the R-6 (3/4 acre) Zone is 30 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance;
- (3) A variance for a rear-yard setback (west) of 48.2 feet, whereas the existing rear-yard setback is 83.2 feet, and the minimum required rear-yard setback in the R-6 (3/4 acre) Zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance;
- (4) A variance for a side-yard setback of 8 feet to the existing shed, whereas the minimum required side-yard setback to an accessory structure in the R-6 (3/4 acre) Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of

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<sup>1</sup> The “existing/approved” lot coverage of approximately 17.81% is the total coverage approved by the Township in conjunction with permits issued in 2018 for the construction of a detached garage and shed. The “proposed” 22.4% coverage is the existing, unapproved coverage for which the Applicants are now seeking approval.

the Ordinance<sup>2 3</sup>;

- (5) A variance for a rear-yard setback of 8 feet to the existing shed, whereas the minimum required rear-yard setback to an accessory structure in the R-6 (3/4 acre) Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Ordinance<sup>2 3</sup>; and

WHEREAS, a public hearing on notice was held on this application on February 9, 2022, at which time interested citizens were afforded an opportunity to be heard; and

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

1. The Board reviewed the application and deemed it to be complete.
2. The Property is a pre-existing, undersized (16,814 square feet; 32,670 square feet required) corner lot with frontage on Woodstone Road and Grove Road, a side yard to the south, and a rear yard to the west. The existing detached garage was constructed in 2019 in accordance with the setback requirements applicable to a detached accessory building, including minimum 10 foot side- and rear-yard setbacks, and a minimum distance of 10 feet from the pre-existing dwelling. The shed was also approved, in 2018, but it was not constructed in accordance with the plan, which showed conforming side- and rear-yard setbacks.

3. The Applicants propose to construct a roof connecting an existing detached two-car garage to an existing dwelling, presently located 10 feet apart. The underside of the proposed roof is approximately 9.5 feet above ground level and the peak is approximately 13.5 feet high. The Applicants are also seeking approval for the non-conforming location of an existing shed, as

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<sup>2</sup> The shed for which approval is sought exists; however, it does not provide the conforming 10-foot side- and rear-yard setbacks that were shown on the plans approved by the Township in 2018.

<sup>3</sup> The Applicants amended the application during the hearing, at the suggestion of the Board Planner, from requesting 8 foot accessory structure setbacks to requesting 7 foot accessory structure setbacks.

well as the excessive, unapproved lot coverage. The requested relief is governed by the requirements set forth in N.J.S.A. 40:55D-70(c).

4. The Applicants' proposal is depicted on a Survey of Property prepared by David J. Von Steenburg, P.L.S., dated October 1, 2019, unrevised, same consisting of one (1) sheet; a Plot Plan prepared by Anthony Maltese, P.E., P.L.S., P.P., dated February 17, 2020, last revised October 18, 2021, same consisting of one (1) sheet; and Architectural Plans prepared by Anthony J. Church, R.A., dated November 18, 2019, unrevised, same consisting of two (2) sheets. The Applicants also submitted eight (8) photographs of the property, same consisting of two (2) pages.

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

6. Frederick Heymann and Maria Chiclana, the Applicants, having an address of 24 Woodstone Road, were duly sworn according to law.

7. Ms. Chiclana testified that the Applicants had obtained approval from the Construction Department to construct a detached garage in accordance with the setback requirements for an accessory building. She explained that, during construction, an existing paver patio was removed and, once the project was complete, a new paver patio and walkway were installed. Ms. Chiclana further explained that the then-existing driveway was narrow and, in her opinion, unsafe and was expanded and reconfigured to mitigate the safety issue. She testified that when the current application was submitted, the Applicants were informed that the maximum permitted impervious coverage for the Property had been exceeded by approximately 731 square feet. Ms. Chiclana testified that the Applicants are also seeking relief for the non-conforming location of the existing shed.



8. Mr. Schley explained that an accessory building, when attached to a principal structure by any means, shall be considered part of the principal structure for the purposes of determining height and setback requirements. He further explained that, in this case, when the garage is attached to the dwelling by the proposed roof over the breezeway, the side and rear setbacks increase and require variances. Mr. Schley noted that the initial plan for the garage conformed to the maximum impervious coverage requirement, and that most of the excess coverage could be attributed to the as-built driveway and pavers/walkways that cover more area than was originally shown on the plans.

9. Ms. Chiclana testified that the main access to the dwelling is through the back door, and that safety, accessibility and usability were the overriding factors in the decision to install the additional pavers. She added that the Applicants installed subsurface drains to mitigate any potential stormwater runoff issues associated with the increased coverage. On questioning by the Board Engineer, Mr. Quinn, as to whether the stormwater management improvements had been reviewed or otherwise inspected by the Township Engineering Department, Ms. Chiclana said they had not been inspected. Mr. Quinn advised the Board that he could not confirm whether the stormwater management measures were sufficient to mitigate any stormwater runoff issues, because he could not quantify the amount of runoff the piping would be able to accommodate without reviewing the specifications or the pipes themselves. He recommended that stormwater mitigation measures be required, based on what currently exists on the Property, and he suggested that the Applicants install a drywell, which would be connected to an existing inlet. After discussion regarding the sufficiency of the piping, the Applicants stipulated to providing proof that the piping provided adequate stormwater runoff mitigation or, in the absence of such proof, they

would install appropriate stormwater management measures, all of which shall be subject to the review and approval of the Township Engineering Department.

10. Mr. Heymann testified that the original one-car attached garage was converted into livable space, and that when they decided to construct the detached garage and the breezeway, their contractor advised that, because the improvements would create a coverage issue, they should build the garage first and then apply for variance relief for the remainder of the project at a later date. As to the shed, Mr. Schley advised that the Survey submitted shows accessory side- and rear-yard setbacks of less than 8 feet, and he suggested that the Applicants amend their application so as to increase the magnitude of the relief requested from 8 feet to 7 feet, and the Applicants did so.

11. The Applicants addressed the comments in the February 3, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley; the February 7, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn; and the February 3, 2022 Review Memorandum prepared by the Environmental Commission. Both Mr. Schley and Mr. Quinn advised that the Applicants had satisfactorily addressed the items set forth in their reviews.

12. On questioning, Ms. Chiclana testified that she had taken the photographs submitted with the application materials, and she confirmed that they constituted an accurate depiction of the Property as it currently exists. On discussion of the gravel behind the shed, the Applicants stipulated, as a condition of approval, to removing same and replacing it with lawn. On questioning, the Applicants acknowledged that any additional coverage beyond that which is currently proposed would require the Applicants to return to the Board for further approval.

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

## **DECISION**

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

15. 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.

16. As to the side- and rear-yard principal structure setback deviations, the Board recognizes that, pursuant to the Ordinance, an “accessory building,” when attached to a principal structure by any means, shall be considered part of the principal structure for the purposes of determining height and setback requirements. As such, when the Applicants’ garage is attached to the dwelling by the proposed roof, the side-yard and rear-yard setback requirements for a proposed structure are applicable, and this increases the required setbacks from 10 feet to 30 feet to the side yard, and from 10 feet to 50 feet to the rear yard. Here, the Board considers that the location of the existing improvements is not being relocated, and that the need for variance relief is triggered solely by connecting the existing detached garage to the principal dwelling.

17. As to the excess lot coverage, the Board recognizes that the Applicants added the additional coverage in order to ensure that the Applicants could traverse their property safely. Additionally, the Board notes that the Applicants have stipulated, as a condition of approval, to

ensuring that sufficient stormwater management measures exist to accommodate the additional runoff.

18. As to the non-conforming accessory structure (shed) setbacks, the Board 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. This reasonable amenity provides a benefit to the neighborhood.

19. The Board finds that the development project as a whole promotes a desirable visual environment, and otherwise promotes the general welfare. The Board recognizes that the proposed improvements will not significantly change the appearance of the dwelling from the right-of-way. As such, the Board finds that the benefits of the proposal substantially outweigh the relatively modest detriments 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).

20. 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 Master 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 Applicants have stipulated to ensuring that adequate stormwater management measures are provided to accommodate the additional coverage, 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 none of the adjacent property owners appeared at the hearing. 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 Master Plan or Zoning Ordinances. In this regard, the Board finds 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).

21. 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 February 9, 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 March, 2022, that the application of **FREDERICK HEYMANN and MARIA CHICLANA**, 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 garage roof shall remain open underneath, as shown on the submitted plans, and the height of the garage shall not exceed the existing garage height of 20 feet;
3. The Applicants shall obtain an engineering permit for all prior work and any further work within the Township right-of-way, prior to the issuance of a permit for the proposed roof;
4. The Applicants shall remove the gravel located in the area behind the shed (between the shed and the fence) and the area shall be replaced with lawn;

5. The Applicants shall provide proof that the existing stormwater management (piping) provides adequate runoff mitigation, and in the absence of such proof, the Applicants shall install appropriate stormwater management measures, all of which shall be subject to the review and approval of the Township Engineering Department;
6. The Applicants shall obtain all requisite permits for the improvements made without the necessary approvals;
7. 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;
8. 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
9. 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:                      Baumann, 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 March 9, 2022.

*Cyndi Kiefer*

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

Dated: March 9, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**MICHAEL and AMY FETCHKO  
Case No. ZB21-035**

**RESOLUTION**

WHEREAS, **MICHAEL and AMY FETCHKO** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance in connection with the construction of two (2), approximately 5 foot wide by 6.5 foot high dormers on the roof of the existing dwelling, on property identified as Block 1204, Lot 11 on the Official Tax Map, more commonly known as 103 Washington Avenue (the “Property”):

A variance for a proposed front-yard setback of 29.8 feet to the dormers, whereas the existing front-yard setback is 24.4 feet, and the minimum required front-yard setback in an R-7 (1/2 acre) Residential Zone is 40 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on February 9, 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 has reviewed the application and deemed it to be complete.
2. The Property is an oversized (27,500 square feet; 21,780 square feet required), though very shallow, lot located in the R-7 Residential Zone with frontage along Washington Avenue. It is presently improved with a 1.5 story, single-family residential dwelling, a frame garage, a frame shed, and related improvements. Of note, the Property is an unusually wide lot that is only 100 feet deep, whereas the minimum required 40-foot front-yard and 40-foot rear-yard

setback requirements result in a building envelope that is only 20 feet deep. Additionally, most of the existing dwelling encroaches upon either the front or the rear setback, significantly limiting the potential for a conforming addition.

3. The Applicants propose to construct two (2), approximately 5 foot wide by 6.5 foot high, second-story dormers on the roof of the existing dwelling. The proposed construction of the dormers takes place on a portion of the dwelling that encroaches into the front yard, thereby requiring the Applicants to obtain bulk variance relief. The requested variance for the front-yard setback is governed by the criteria of N.J.S.A. 40:55D-70(c).

4. The Applicants' proposal is depicted on a Survey prepared by Christopher J. Aldrich, P.L.S., dated February 17, 2021, unrevised, same consisting of one (1) sheet and Architectural Plans prepared by Stephen Majewski, A.I.A., dated November 19, 2021, unrevised, same consisting of two (2) sheets. The Applicants also submitted a compendium of five (5) photographs of the Property, same consisting of two (2) pages.

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

6. Michael and Amy Fetchko, the Applicants, having an address of 103 Washington Avenue, were duly sworn according to law. Mr. Fetchko testified that their proposal to construct two (2) dormers on an existing 1.5 story dwelling requires variance relief because the dormers constitute an encroachment into the required front-yard setback. He explained that the dormers are part of a larger interior renovation and that, although the existing house encroaches further into the setback than the proposed dormers, they still require relief because they constitute a vertical extension of the portion of the structure in the setback. Mr. Fetchko further explained that, because the Property is wide but not deep, most of the existing dwelling encroaches into either the required



front-yard setback or the required rear-yard setback. On questioning, Mr. Fetchko testified that the photographs submitted with the application materials were taken by their architect, Mr. Majewski, and confirmed that the photographs accurately depict the Property as it presently exists. The Applicants stipulated that the exterior of the dormers shall be substantially similar to the balance of the existing dwelling as to color, materials, and architectural style.

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

### **DECISION**

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

#### **The Bulk Variance Relief – Positive Criteria:**

9. As to the positive criteria for (c)(1) or “undue hardship” variance relief for the front-yard setback deviation, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. Here, the Board recognizes that, given the shallowness of the lot and the minimum required setbacks, the building envelope is only 20 feet deep and, therefore, most of the existing dwelling encroaches into the required setbacks. The Board further recognizes that the existing front-yard setback deviation was approved in 1996 when the Applicants obtained variance relief to construct an addition that maintained the same non-conforming front-yard setback as the pre-existing dwelling. The Applicants’ proposal does not result in an exacerbation of the existing non-conforming condition. Additionally, the Board finds that the undue hardship that would be incurred

by the Applicants if the zoning regulation were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(1).

**The Bulk Variance Relief – Negative Criteria:**

10. As to the negative criteria for the requested bulk variance relief, 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 Master Plan and Zoning Ordinance. As to the “substantial detriment” prong of the negative criteria, the Board recognizes that the peak of each dormer matches the peak of the existing roof, which is 19 feet high, and the front of each dormer is set back 5.4 feet further from the street than the front of the existing dwelling. Moreover, the Board notes the modest nature of the proposal and the lack of public opposition serve to minimize the detriment of the proposal and support its approval, respectively. As to the “substantial impairment” prong of the negative criteria, the Board finds that the proposal clearly does not rise to the level of “spot zoning” and, instead, is consistent with the intent and purpose of the Master Plan. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(1).

11. In conclusion, the Board finds that the Applicants have satisfied both the positive and negative criteria for the requested bulk variance relief.

WHEREAS, 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 March, 2022, that the application of **MICHAEL AND AMY FETCHKO**, 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 exterior of the dormers shall be substantially similar to the balance of the existing dwelling as to color, materials, and architectural style;
- (3) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (4) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- (5) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

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

*Cyndi Kiefer*

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

Dated: March 9, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**B3 CHURCH STREET, LLC  
Case No. ZB21-036**

**RESOLUTION**

WHEREAS, B3 CHURCH STREET, LLC (the “Applicant”), has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking preliminary and final site plan approval, together with variance and site plan exception relief as set forth below, in connection with the conversion of the second story of an existing commercial building into a residential use (two apartments), located on property identified as Block 7501, Lot 15 on the Township Tax Map, more commonly known as 15 Church Street (the “Property” or “Site”):

- (1) A d(1) variance for two dwelling units within a building which also contains a business use, whereas only one dwelling unit is permitted in such a building located in the B-4 Liberty Corner Business Zone, pursuant to Section 21-10.8.a.1.c of the Land Development Ordinance (the “Ordinance”); and
- (2) A site plan exception for outdoor lighting standards for other than pedestrian walkways spaced a distance of more than 60 feet apart, whereas lighting standards for other than pedestrian walkway lighting shall be spaced a distance not to exceed five times the mounting height (here, 5x12 feet equals a maximum of 60 feet apart), pursuant to Section 21-41.2 of the Ordinance;  
and

WHEREAS, a public hearing on notice was held on such application on February 9, 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 Applicant and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Property is a rectangular lot consisting of 16,988 square feet (0.39 acres) located in the B-4 Liberty Corner Business (“B-4”) Zone with frontage on Church Street. The

Property is also part of the Liberty Corner Historic District, which is listed on the New Jersey and National Registers of Historic Places. The existing two-story, 5,513 square foot building previously served as the Liberty Corner Fire House. In 1993, the Planning Board granted site plan approval allowing the building to be converted to a business use (the “1993 Approval”). The first floor of the building (2,787 square feet) is currently occupied by a bike shop (Just Riding Along) and the second floor (2,726 square feet) is currently vacant, but was last used as a Pilates studio. Two driveways provide one-way ingress and egress to 25 parking spaces located to the rear and along both sides of the building.

2. The Applicant proposes primarily interior renovations to convert the second floor of the existing building from a commercial use into two residential apartments. One apartment will be accessed by an existing door on the front of the building, and the other by an existing door on the west side of the building. Each apartment will contain two bedrooms and have access to an existing second floor deck at the rear of the building. The Applicant also proposes to replace all four (4) of the existing parking area light poles with pole-mounted LED fixtures in the same four locations. No changes are proposed to the existing parking/pavement areas.

3. Among the uses permitted in the B-4 Zone are retail sales and services, and one (1) dwelling unit within a building which also contains a business use. The existing bike shop is a permitted retail use. Since the Applicant proposes two (2) dwelling units, whereas only one (1) dwelling unit is permitted, the proposal requires use variance relief pursuant to N.J.S.A. 40:55D-70(d)(1). No exacerbations of the existing nonconforming conditions are proposed.<sup>1</sup>

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<sup>1</sup> The existing nonconforming floor area ratio (permitted: 12.5%; existing: 32.5%) pre-dates the 1993 Approval. The other existing nonconformities were approved in conjunction with the 1993 Approval.

4. The Applicant's proposal is described and depicted on the following: Site Plan prepared by William G. Hollows, P.E., P.L.S., P.P., dated August 18, 2021, last revised January 6, 2022, same consisting of four (4) sheets; Architectural Plans prepared by Daniel W. Lincoln, R.A., dated August 4, 1993, last revised November 9, 2021, same consisting of six (6) sheets; and a Survey also prepared by Mr. Hollows, dated November 8, 2021, unrevised, same consisting of one (1) sheet. The Applicant also submitted a compendium of eight (8) photographs of the Property.

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

6. Frederick Zelley, Esq., of Bisogno, Loeffler & Zelley, LLC, entered his appearance on behalf of the Applicant. He summarized the Applicant's proposal and the relief requested.

7. John P. Boyle, Managing Member of B3 Church Street, LLC, having an address of 313 South Avenue, Suite 202, Fanwood, New Jersey, was duly sworn according to law, provided his qualifications, and provided testimony as a fact witness. He testified that the Property was purchased in 2021 and noted that the existing building previously served as the Liberty Corner Fire House. Mr. Boyle testified that Just Riding Along (a bike shop) currently occupies the first floor of the building and that the second floor is vacant. He explained that he is seeking approval to do 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.

8. On questioning, Mr. Boyle testified that the proposed apartments would be approximately equal in size. On further questioning, he opined converting the second story to a residential use would be better than proposing another commercial use, since a commercial use would require more parking and could potentially have a detrimental impact on the existing site

circulation.

9. William G. Hollows, P.P., P.E., P.L.S., having an address of 192 Central Avenue, Stirling, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Mr. Hollows introduced into evidence, as **Exhibit A-1**, a colorized rendering of the existing conditions on the Property in 1993. He testified that when the as-built survey was done in 1994, the dumpster was relocated to its current location. Mr. Hollows confirmed that no changes to the Site are proposed.

10. Mr. Hollows introduced into evidence, as **Exhibit A-2**, a “Parking Layout” Plan dated February 9, 2022. Referencing same, he described the changes that had been made to the parking lot in response to comments made by the Board’s professionals and testified that the number of parking stalls would exceed the number required by the Ordinance even though the changes result in the loss of three (3) parking stalls. Mr. Hollows testified that the Applicant would cut the parking lot pavement to provide the required 10-foot-wide parking setback/buffer along the adjoining residential property to the rear. He further testified that the Applicant would replace the six (6) angled parking spaces on the west side of the Property with three parallel parking spaces, as well as restripe the parking lot. On discussion, it was noted that the proposed restriping would reduce the width of the existing loading space from 12 feet to nine (9) feet, requiring a site plan exception from Section 21-39.2.b of the Ordinance, which requires a minimum loading space width of 12 feet. Mr. Hollows testified that the loading space width was reduced in order to widen the existing handicapped parking space to comply with current Americans with Disabilities Act (“ADA”) standards, and that the actual width available for loading activities was not reduced because the loading space would be adjacent to the five (5) foot wide access aisle of the handicapped parking space, which would remain unobstructed. On further discussion, Mr. Boyle

stated that he did not think that designating specific parking stalls for the residential tenants was necessary however, but that he would reconsider if it became an issue.

11. Mr. Hollows testified that, rather than replace the existing light poles, the Applicant proposes to retrofit the existing fixtures with LED lighting. He explained that a timing mechanism will be utilized to dim the lights to security level lighting after 11:00 PM, and the Applicant stipulated to same. The Applicant further stipulated to installing house-side shielding to eliminate any light spillage onto the adjacent residential lot.

12. The Applicant stipulated, as a condition of approval, to complying with the comments and requirements set forth in the February 7, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and the February 8, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn. The Applicant further stipulated to: (1) installing bollards to protect the apartment entrance located on the west side of the building from vehicular traffic; (2) providing adequate refuse removal services; (3) complying with the applicable noise regulations; (4) prohibiting exterior storage on the Property except for within the fenced area under the deck; and (4) enlarging the dumpster enclosure, which would provide more area that could be used for storage.

13. Daniel W. Lincoln, R.A., having an address of 28 Olcott Avenue, Bernardsville, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. Lincoln testified that he is familiar with historic preservation and provided an overview of the history of the Property. Referencing the architectural plans he submitted, Mr. Lincoln provided an overview of the floor plans and utilities proposed for each apartment. He confirmed that no structural changes are proposed aside from the modification of interior walls. On discussion, the Applicant stipulated to ensuring any rooftop



mounted equipment would be screened appropriately and confirmed that no ground mounted equipment is proposed.

14. Mr. Zelley, on summation, contended that the Applicant had demonstrated an entitlement to the requested subsection d(1) use variance relief, by demonstrating that the Site was particularly suitable for the proposed use. He noted that the proposal does not result in any significant modifications of the exterior of the existing building or the view of same from the right-of-way. He explained that the proposed residential use is not prohibited and that the Applicant could use the entire second floor for same. However, he contended that the Applicant's proposal to divide the space in half to create two reasonably sized apartments, rather than one large apartment, was a more appropriate use for the second story than a commercial use, which would have higher parking requirements.

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

### **BOARD DECISION**

16. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied its burden of proving an entitlement to preliminary and final site plan approval, subsection d(1) use variance relief, and the site plan exception relief sought herein.

#### **The Subsection d(1) Use Variance Relief:**

17. As to the subsection d(1) use variance relief for the non-permitted second residential dwelling on the second floor of the existing commercial building, the Board notes that New Jersey courts recognize three circumstances in which the "special reasons" required for such a 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.” See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

18. Here, the Board finds that the Applicant has satisfied the positive criteria required for the grant of a subsection d(1) use variance, since it has demonstrated that the location of the Site within the municipality is particularly well suited to the use, despite the zoning restriction. As to particular site suitability, the Board recognizes that in the context of the positive criteria, site suitability is not concerned with ordinance zoning criteria, but is instead focused on (1) why the location of the site within the municipality is particularly suited to the use despite the zoning and (2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use. See, Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 280 (1967). Moreover, the Supreme Court has clarified that a particular site suitability finding does not require that the proposed site be uniquely suitable. See, Price v. Himeji, LLC, 214 N.J. 263 (2013).

19. The Board finds that the Applicant has demonstrated that the proposal serves the general welfare and that the Site is particularly suitable for the proposed residential use. In this regard, the Board accepts the Applicant’s testimony that the proposal will advance the purposes set forth in N.J.S.A. 40:55D-2. Specifically, the Board finds that the proposal will advance purposes of subsections (a), (e), (i), and (m) of Section 2 of the Municipal Land Use Law (“MLUL”), since it will promote the general welfare; promote the establishment of appropriate population densities and concentrations; promote a desirable visual environment; and encourage coordination of various public and private procedures with a view of lessening the cost of development and the more efficient use of land. The Board recognizes that the proposed residential

use is (a) less intense than a commercial use and (b) requires less parking. The Board notes that the building itself is not being significantly modified and, therefore, the appearance and functionality of the Property will not significantly change from what has existed for many years. The Board further recognizes that an apartment is permitted on the second floor and concurs with the Applicant that one large apartment is less desirable than two reasonably sized apartments, particularly given the increased need for housing and decreased need for office space in the area. As such, the Board concludes that the Applicant has satisfied the positive criteria required for the requisite d(1) use variance.

20. As to the negative criteria, the Board recognizes that in d(1) use variance cases the Applicant must demonstrate the negative criteria with “an enhanced quality of proof.” Specifically, in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), the Supreme Court required that an applicant must show:

in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicant’s proofs and the board’s findings must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district

21. The Board finds that the Applicant has satisfied its burden of proving the negative criteria. In this regard, the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and that the variance relief sought is not inconsistent with the intent and purpose of the Master Plan and the applicable provisions of the Land Development Ordinance. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. 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 of the governing body and planning board authority.

22. As to the “substantial detriment” prong of the negative criteria, the Board agrees with the undisputed testimony provided by the Applicant’s professional architect that the proposal will not result in substantial detriment to the character of the neighborhood because the exterior of the building is not changing, and the proposal will not result in additional traffic, noise, or other nuisances. In fact, the proposed residential use will have less of an impact than a permitted commercial use that could otherwise be located on the second floor. As to the “substantial impairment” prong of the negative criteria, the Board finds that granting the requested relief certainly does not rise to the level of rezoning the Property.

23. As to the heightened standard of proof under Medici, the Board recognizes that one residential apartment of any size is permitted. The Board concurs with the Applicant’s testimony that one large apartment, rather than two reasonably sized apartments, would be a waste of space and would deny a reasonably priced housing alternative to a second deserving individual, couple, or small family. Additionally, the Board recognizes that when the Master Plan was prepared, working from home was not as common and, therefore, office space was more desirable. Given the advent of working from home, there is an increased need for residential space, rather than commercial and office space, throughout the Township and same could not have been anticipated. As such, the Board finds that the Applicant has satisfied the enhanced quality of proof in accordance with Medici. As such, the Board finds that the Applicant has satisfied the negative criteria for subsection d(1) use variance relief.

24. Based on the foregoing, the Board finds that the Applicant has satisfied both the positive and negative criteria for the requested variance relief.

**The Site Plan Exception Relief:**

25. The Board recognizes that, pursuant to Section 21-34 of the Land Development Ordinance, an exception may be granted from the ordinance requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions of such approval if the literal enforcement of one or more provisions of the ordinance is impracticable or would exact undue hardship because of peculiar conditions pertaining to the land in question.

26. The Board finds that the requested relief for the spacing of lighting fixtures and width of a loading space should be granted, since literal enforcement would be impracticable and exact undue hardship upon the Applicant due to the nature of the use and the existing conditions on the Site. The Board recognizes that it is important for residents and employees to have a well-lit entrance and sidewalks. The Board concurs with the Applicant's testimony that the increased spacing of the lighting fixtures is necessary, and the Board finds that the relatively modest detriment associated with same is mitigated by the design of the fixtures, such that the source of the light is shielded, the LED lights will be more efficient, the lighting will result in less glare than the existing older lighting fixtures, and the Applicant's stipulation to reducing exterior lighting to security levels. As to the width of the loading space, the Board finds that the Applicant proposes to reduce the width of the existing loading space so that the existing handicapped parking space can be upgraded to comply with current ADA standards, and that the actual width available for loading activities will not be reduced because the loading space will adjoin the access aisle of the handicapped parking space.

27. As such, the Board finds that the Applicant has demonstrated that the requested site plan exception relief is reasonable and that the literal enforcement of the subject provisions of the Ordinance is impracticable and would exact undue hardship because of the peculiar conditions

affecting the Property.

**The Preliminary and Final Site Plan Approval:**

28. The Board further finds that, in accordance with Article VII of the Ordinance and Article 6 of the MLUL, good cause exists for granting the application for preliminary and final site plan approval, subject to the conditions of approval set forth below.

WHEREAS, the Board took action on this application at its meeting on February 9, 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, that the application of B3 CHURCH STREET, LLC, for preliminary and final site plan approval and use variance and site plan exception relief, as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
2. The Applicant shall amend the plans as follows:
  - a. The drawing index on the site plans shall be amended to include the architectural plans;
  - b. The zoning schedule on the site plans shall be revised to include floor area ratio information, and to correct the proposed lot coverage;
  - c. The parking schedule on the site plans shall be revised to reflect a retail requirement of 1 space/200 square feet, and a residential requirement of 2.5 spaces/dwelling unit. The specified retail floor area (2,798 square feet) shall be reconciled with the floor area specified on sheet A-0 (2,787 square feet);
  - d. The site plans shall include a note stating: "Accessible routes from the handicapped parking space into the building shall comply with the New Jersey Uniform Construction Code ("NJUCC"). In the event an improvement designed for handicapped accessibility is not subject to the NJUCC, the Applicant's engineer shall certify that the improvement has been constructed

in compliance with all applicable standards and guidelines of the Americans with Disabilities Act (“ADA”), prior to final approval by the Township”;

- e. The site plans shall be revised to reflect compliance with the 1993 Approval, except where the 1993 Approval is inconsistent with the terms and conditions set forth herein;
  - f. The site plans shall be revised to be generally consistent with **Exhibit A-2**, including providing a 10-foot-wide parking setback/buffer along the adjoining residential property to the rear, providing an ADA-compliant, van-accessible handicapped parking space, replacing the six (6) angled parking spaces on the west side of the Property with three parallel parking spaces, and shifting the westerly parking aisle five (5) feet away from the building;
  - g. The label in the center of the first floor plan shall be revised to indicate bike shop. The second floor plan, deck plan, and/or rear elevation shall be revised for consistency relative to proposed windows, doors and deck access; and
  - h. The architectural plans shall be revised to reflect that the current tenant is no longer a flower and gift space on the first floor.
- 3. The Applicant shall revise the plans to include a detail regarding the retrofitting of the existing lighting fixtures, which shall be downward directed or appropriately shielded to prevent light spillage onto the adjacent residential lot;
  - 4. The Applicant shall reduce the exterior lighting by 50% to security lighting levels (less than an average lighting level of 0.9 footcandles) by no later than 11:00 PM;
  - 5. Any additional exterior roof-mounted utility equipment shall be sufficiently screened and the Applicant shall revise the plans to show screened locations, as necessary;
  - 6. The Applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity;
  - 7. The Applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department;
  - 8. The project shall be subject to review and approval by the Bernards Township Sewerage Authority prior to issuance of any permit;
  - 9. The Applicant shall revise the plans to show the installation of bollards to protect the apartment entrance located on the west side of the building from vehicular traffic;
  - 10. The Applicant shall provide adequate refuse removal services for both the existing commercial use and the proposed residential uses, and shall revise the plans to show that the existing dumpster enclosure shall be enlarged without encroaching upon the

adjacent parking or buffer areas;

11. The Applicant shall comply with the applicable State and local noise regulations;
12. The Applicant shall not permit exterior storage on the Property, except for within the fenced area under the deck and/or within the dumpster enclosure, and same shall be set forth in the relevant lease agreements for the commercial and residential uses;
13. The Applicant shall submit development fees, as applicable, in accordance with Section 21-86;
14. The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State. The Applicant shall obtain permits and/or approvals from all applicable agencies and/or departments, including but not necessarily limited to the Bernards Township Sewerage Authority;
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. Pursuant to the Board's Rules and Regulations, the following time limitation conditions shall apply to any approval, unless modified by the Board.
  - a. Revisions to Plans. Revisions to the submitted plans and other documents, as may be required as conditions of approval, shall be made, and the plans signed by the Board Secretary, within six months of the adoption of the Board's resolution. In the event that the Applicant fails to make the revisions as required and/or fails to obtain signatures on the plans as required, all within said time period, or extension thereof as granted by the Board, the approval shall expire and become automatically null and void; and
  - b. Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy. The Applicant shall apply for and obtain a construction permit within two years of the adoption of the Board's resolution. If during said two year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The Applicant shall also have one year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall automatically expire and become null and void.



ROLL CALL VOTE:

Those in Favor: Baumann, 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 on March 9, 2022

*Cyndi Kiefer*

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

Dated: March 9, 2022.