

# **BERNARDS TOWNSHIP** **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v2  
Regular Meeting  
April 6, 2022

## **CALL TO ORDER**

Vice Chairman Tancredi called the meeting to order at 7:35 PM.

## **FLAG SALUTE**

**OPEN PUBLIC MEETINGS STATEMENT** – Vice Chairman Tancredi 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."

Chairwoman Genirs arrived at 7:38 PM.

## **ROLL CALL:**

Members Present: Baumann, Cambria, Genirs, Helverson, Kraus, Pavlosky, Pochtar, Tancredi  
Members Absent: Amin  
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 Mr. Tancredi, seconded by Ms. Pochtar, all eligible in favor and carried, the absence of Mr. Amin was excused.

## **APPROVAL OF MINUTES**

March 9, 2022 – Regular Session - On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted. Ineligible: Amin, Helverson

March 17, 2022 – Special Session - On motion by Ms. Baumann, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted. Ineligible: Mr. Cambria, Mr. Helverson, Mr. Pavlosky, Ms. Pochtar, Mr. Tancredi (all absent)

## **APPROVAL OF RESOLUTIONS**

[Nash, David & Michelle](#); Block 7901, Lot 8; 61 Archgate Road; ZB21-037 (approved) – Ms. Pochtar moved to approve the resolution as drafted. Ms. Baumann seconded.

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

Motion carried.

[Bhatia, K./Shah-Bhatia, N.](#); Block 11201, Lot 23; 11 Parkwood Lane; ZB21-038 (approved) – Ms. Baumann moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

Yochum, Geoffrey G. & Michelle A.; Block 6701, Lot 17; 58 Penwood Road; ZB22-001 (approved) – Mr. Tancredi moved to approve the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

Maloney, Karl & Sharon; Block 9501, Lot 29; 109 Woodman Lane; ZB22-003 (approved) – Ms. Baumann moved to approve the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

#### **HEARING** - Modification of Condition

LCB Senior Living Holdings II, LLC; Block 2301, Lot 31; 219 Mt. Airy Road – Extension of Time to Obtain Permanent Certificate of Occupancy; ZB19-010B

Present: Thomas J. Malman, Esq., Attorney for the Applicant

Thomas J. Malman, Esq., attorney with the firm of *Day Pitney LLC*, Parsippany, NJ, entered his appearance on behalf of the applicant. Noting that construction of the facility is projected to be complete by mid-year 2023, he requested a one-year extension of time to 10/23/2023 to obtain a permanent certificate of occupancy.

Ms. Pochtar moved to grant the applicant's request for an extension of time to obtain a permanent certificate of occupancy to 10/23/2023. Mr. Tancredi seconded.

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

Motion carried.

#### **PUBLIC HEARING**

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

Present: Steven J. Tripp, Esq., Attorney for the Applicant  
Marybeth Holgate, Senior Project Manager for the Applicant  
Bryan Ehnes, PE, Engineer for the Applicant  
Keenan Hughes, AICP, PP, Planner for the Applicant

Mr. Warner stated that notice was sufficient and timely therefore the board had jurisdiction to hear this application. Mr. Ehnes, Mr. Hughes, Ms. Holgate, Mr. Quinn and Mr. Schley were duly sworn.

Steven J. Tripp, Esq., attorney with the firm of *Wilentz, Goldman & Spitzer, PA*, Morristown, NJ, entered his appearance on behalf of the applicant and advised the board that this application proposes to construct a guardhouse for security purposes, at the entrance of the Ridge, a conference center on the subject property, requiring preliminary and final site plan approval. In addition, he explained that the proposal does not comply with the conditional use standards because it cannot meet all zoning requirements for the E-1 Zone, therefore a conditional use variance is required along with three (3) additional variances. One (1) exception and one (1) waiver are also being sought. Noting that there is no other logical location for the guardhouse, Mr. Tripp confirmed that it would be small and that it would blend in with the surroundings.

Bryan Ehnes, PE, engineer with the firm of *Bohler Engineering*, Warren, NJ, was accepted by the board as an expert in the field of civil engineering. **Exhibit A-1**, sheet number C-01, "Aerial Exhibit," a color aerial photo of the existing conditions on the subject site prepared by Bohler Engineering, dated 04/06/2022, was entered into evidence. Using the exhibit, Mr. Ehnes gave a brief description of the site, noting that the lots have been consolidated into one (1) lot and confirming that the Ridge is owned and operated exclusively by and for Verizon. He testified that because the site is environmentally constrained, the applicant has applied to the NJ Department

of Environmental Protection (NJDEP) for a Letter of Interpretation (LOI) and other required permits, adding that there have been no problems raised by the NJDEP with the current design.

**Exhibit A-2**, a colorized version of sheet number C-302, "Site Layout," prepared by Bohler Engineering, dated 04/06/2022, was entered into evidence. It showed the proposed 48 square foot guardhouse and associated improvements. Mr. Ehnes testified that the 3-foot-high decorative wall located in front of and behind the guardhouse is meant to provide protection for someone standing outside the guardhouse and that variance relief is required for both the wall and the Ridge logo sign (internally illuminated) mounted on the wall. **Exhibit A-3**, sheet number A-1 of architectural plans prepared by Silverberg Associates, Inc., dated 12/22/2021, was entered into evidence and showed a detail of the wall with the sign.

Mr. Ehnes further testified that the guardhouse would be manned 24/7 and gave a brief description of the remainder of the project which involved proposed traffic circulation in the guardhouse area.

Marybeth Holgate, Senior Project Manager on this project with a business address of 295 North Maple Avenue, Basking Ridge, NJ (Verizon Headquarters) provided testimony to clarify how the verification of credentials for entry to the site will be handled.

Referring to the Environmental Commission's (EC) memo dated 03/30/2022, Mr. Ehnes testified that the applicant planned to remove six (6) trees and plant seven (7). He opined that the EC's request for 14 trees would cause a larger disturbance in the environmentally sensitive areas that surround the proposed guardhouse. He added that the natural vegetation on the southern side of the project area is sufficient in height and density to buffer residences to the south who would potentially be most affected. After some discussion, he agreed to plant 14 trees, as requested by the EC, somewhere on the site.

Mr. Ehnes also provided testimony concerning the proposed new light fixtures, all downward directed, stating that they meet the height requirements and match the existing fixtures. **Exhibit A-4**, sheet number C-601 "Soil Erosion & Sediment Control" prepared by Bohler Engineering, dated 01/28/2022 was entered into evidence and Mr. Ehnes outlined in red the project area that was used in calculating the average footcandles of 5.45. Mr. Tripp added that, in asking for a waiver for maximum allowable illumination in a vehicular area, he had picked one area next to the guardhouse (where the light is focused) that had the highest average of 10.05. After discussing it, it was agreed that the average of the entire project area should be used in the waiver request. Mr. Ehnes referred to **Exhibit A-1** to show that there is dense vegetation between the site and the closest residence and that the closest light pole is already in existence. He also pointed out that there are zero footcandles at all the boundaries of the project area and that, because the guardhouse would be manned 24/7, lighting would not be dimmed.

Mr. Ehnes stated that the development proposal is classified as a minor development which would require water quantity control equivalent to three (3) inches of runoff from all new impervious cover and that the applicant is requesting a waiver from this requirement due to the proximity of adjacent wetlands and because this area of the entire site is serviced by a large above ground detention pond facility. He noted that in the board engineer's memo dated 04/04/2022, Mr. Quinn supported this request in part because the new impervious coverage amount is so small relative to the overall drainage area that overall runoff calculations for the drainage area would be unchanged.

In conclusion, Mr. Ehnes stated that the conservation easements would be modified and NJDEP approval would be submitted as conditions of approval. He stipulated to the comments in both Mr. Schley's memo dated 03/28/2022 and in Mr. Quinn's memo dated 04/04/2022. He also confirmed that the fire official's request for a copy of the plan for emergency services access to the location when the guardhouse is unoccupied had been submitted to him. Finally, Mr. Ehnes agreed to obtain the necessary approvals from the Bernards Township Sewerage Authority for work within the sanitary sewer easement near the proposed guardhouse.

Hearing no further questions from the board members, Chairwoman Genirs opened the hearing to the public for questions. In response to a question from Todd Edelstein, 172 Riverside Drive, Mr. Ehnes stipulated to planting trees that would match the existing vegetation. Hearing no further questions, that portion of the hearing was closed.

Keenan Hughes, AICP, PP, LEED, AD, planner with the firm of *Phillips, Priebe, Grygiel, Leheny & Hughes LLC*, Hoboken, NJ, was accepted by the board as an expert in the field of professional planning. Since the application could not meet all of the criteria needed for a conditional use, Mr. Hughes provided testimony to support the approval of a d-3 variance (deviation from a specification or standard pertaining solely to a conditional use). He then provided testimony to demonstrate entitlement to the requested relief for the wall and Ridge signage under "c-2" (benefits outweigh hardship) criteria. Finally, Mr. Hughes opined that the exception for the lighting was reasonable since allowable lighting levels would be inadequate for this usage.

Mr. Tripp did not offer a summation. Mr. Warner summarized the relief requested and the conditions of approval that the applicant had stipulated to.

Hearing no further questions from the board members, Chairwoman Genirs opened the hearing to the public for questions or comments. Hearing none, that portion of the hearing was closed.

After the board's deliberations, Mr. Tancredi moved to direct the board attorney to draft a resolution memorializing the board's decision to grant Preliminary and Final Site Plan approval, exception, waiver and variance relief as requested by the applicant, subject to the conditions stipulated to by the applicant and as stated during deliberations. Mr. Cambria seconded.

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

Motion carried.

#### **COMMENTS FROM MEMBERS OR STAFF**

#### **ADJOURN**

Moved by Ms. Baumann, seconded by Chairwoman Genirs, all eligible in favor and carried, the meeting was adjourned at 9:27 PM.

Respectfully submitted,

*Cyndi Kiefer*

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 05/04/2022*

04/27/2022 dssw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**DAVID and MICHELLE NASH  
Case No. ZB21-037**

**RESOLUTION**

WHEREAS, **DAVID and MICHELLE NASH** (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 a one-story, 280 square foot open porch on the front of the existing dwelling, on property identified as Block 7901, Lot 8 on the Official Tax Map, more commonly known as 61 Archgate Road (the “Property”):

A variance for a proposed front-yard setback of 68.8 feet to the front porch, whereas the existing front-yard setback is 72.7 feet, and the minimum required front-yard setback in an R-4 (1 acre) Residential Zone is 75 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on March 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 a slightly undersized (40,012 square feet; 43,560 square feet required), narrow, lot located in the R-4 Residential Zone with frontage along Archgate Road. It is presently improved with a two-story, single-family residential dwelling, a frame shed, paver patio, and related improvements.

3. The Applicants propose to construct a one-story, 12' by 23'-4" (280 square foot) open porch on the front of the existing dwelling. The Applicants also propose to remove the existing 32 square foot open front portico.

4. Approximately one-half of the proposed 23'-4" wide, 12' deep open porch encroaches upon the minimum required 75' front yard setback area. Section 21-18B of the Ordinance provides a front setback exemption for certain open porches, whereby an open front porch on a pre-existing dwelling may extend up to 6' into the minimum required front yard, provided the porch does not exceed 10' wide, 8' deep, or 10' high (floor to ceiling). The Applicants' proposed porch extends 6.2' into the minimum required front yard, and does not meet the exemption criteria because it exceeds 10' wide and 8' deep (it does comply with the 10' height limit). Therefore, the porch is subject to the 75' front yard setback requirement, and the proposed 68.2' setback requires a variance. The requested variance for the front-yard setback is governed by the criteria of N.J.S.A. 40:55D-70(c).

5. The Applicants' proposal is depicted on Plans prepared by Jonathon E. Booth, R.A., dated December 2, 2021, unrevised, same consisting of three (3) sheets. The Applicants also submitted a Survey prepared by Frederick L. Voss, P.E., P.L.S., dated June 4, 2019, same consisting of one (1) sheet; and a compendium of four (4) photographs of the Property.

6. 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.

7. David Nash, one of the Applicants, having an address of 61 Archgate Road, was duly sworn according to law. He testified that the proposed project, which includes the removal of an existing open front portico and construction of a new one-story open front porch, requires variance relief for the proposed encroachment into the front yard setback. On questioning, Mr.

Nash testified that none of his neighbors expressed concerns about the project.

8. Jonathon E. Booth, R.A., having a business address of 33 Bullion Road, Basking Ridge, 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. Booth provided a brief description of the existing and proposed conditions, as well as the subject property itself. He opined that if the Applicants were to construct a conforming new porch, it would be too narrow and would not meet the Applicants' objective of providing a gathering area for family and friends. Mr. Booth explained that, although a conforming porch could be constructed on the side of the existing dwelling, if built there, the porch would have a greater impact on the adjacent neighbor. He added that several utilities are also located there in this area of the Property. Finally, Mr. Booth testified that he had taken the photographs submitted with the application in approximately February of 2022, and confirmed that they accurately depict the Property as it currently exists.

9. Mr. Nash stipulated, as a condition of approval, to complying with the comments and requirements set forth in the March 4, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and the March 7, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn. Both Mr. Schley and Mr. Quinn confirmed that the questions raised in their review memoranda had been addressed to their satisfaction.

10. Geoffrey G. Yochum, having an address of 58 Penwood Road, was duly sworn according to law and expressed his support for the Applicants' proposal.

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

## **DECISION**

12. 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 both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

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

13. 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 location of the lawfully constructed dwelling and the orientation of the dwelling, any proposed front porch would encroach into the minimum required front-yard setback. 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:**

14. 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 (“MLUL”) 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. Here, the proposed front porch will improve the appearance of the dwelling as viewed from the right-of-way, as well as improve the functionality of the dwelling for the Applicants. The Board recognizes that while the porch could be located on the



side of the dwelling, same would result in the porch being closer to the adjacent neighbor. As such, the Board finds that the proposal advances the purposes of the MLUL in that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. 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).

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

15. As to the negative criteria for all of 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 proposal will improve the appearance of the dwelling. Moreover, the Board notes the modest nature of the proposal and the lack of public opposition, and, in fact, public support of the application, 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 and Ordinance. As such, the Board finds that the Applicants have satisfied the negative criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

16. 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 6th day of April, 2022, that the application of **DAVID and MICHELLE NASH**, 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 porch shall be substantially similar to the balance of the existing dwelling as to color, materials, and architectural style;
- (3) The front porch shall remain an open porch, i.e. covered with a roof but not enclosed on the sides except for columns (and potentially open railings), as depicted on the plans;
- (4) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (5) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- (6) Pursuant to Section 21-5.10 of the Land Development Ordinance, the 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 April 6, 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: April 6, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**KSHITIJ BHATIA and NIYATI SHAH-BHATIA  
Case No. ZB21-038**

**RESOLUTION**

WHEREAS, **KSHITIJ BHATIA and NIYATI SHAH-BHATIA** (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 (1) removal of an existing rear yard patio and wood deck; (2) construction of a 20’ by 40’ (800 square foot) inground swimming pool with an 8’ by 8’ (64 square foot) spa and surrounding patio/walkways; and (3) construction of a 12’-9” by 43’-1” (549 square foot) covered porch (roof with columns) over a portion of patio in the location of the existing wood deck, all of which is to be located on property identified as Block 11201, Lot 23 on the Tax Map, more commonly known as 11 Parkwood Lane (the “Property”):

1. A variance for a proposed side-yard setback (west) to the proposed porch roof of 48 feet, whereas the existing side-yard setback is 39.7 feet, and the minimum required side-yard setback is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
2. 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 March 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 an undersized, narrow lot located in the R-1 (3 acre) Residential

Zone with frontage on Parkwood Lane. The Property is presently improved with a two-story, single-family residential dwelling, wood deck, paver patio, and asphalt driveway.

3. The Applicants propose the (1) removal of an existing rear yard patio and wood deck; (2) construction of a 20' by 40' (800 square foot) inground swimming pool with an 8' by 8' (64 square foot) spa and surrounding patio/walkways; and (3) construction of a 12'-9" by 43'-1" (549 square foot) covered porch (roof with columns) over a portion of patio in the location of the existing wood deck.

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 dwellings on Lot 24 (19 Parkwood Lane) to the east side and Lot 20 (173 Somerville Road) to the south/rear. The dwelling on Lot 24 is angled toward the Applicants' property and located further from Parkwood Lane than the Applicants' dwelling, such that the proposed pool would have to be moved about 45' further back on the Property to comply with the pool location requirement as it relates to Lot 24. The dwelling on Lot 20 is uniquely positioned between the rear of the Property and Route 78 because it faces the Property, such that it is not possible for the Applicants to comply with the pool location requirement as it relates to Lot 20.

5. The side-yard setback and pool location variance are governed by the criteria of N.J.S.A. 40:55D-70(c).

6. The Applicants' proposal is depicted on a Pool Location and Grading Plan prepared by David J. Egarian, P.E., dated November 15, 2021, last revised February 2, 2022, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by William T. Manning, P.L.S., dated September 9, 2021, unrevised, same consisting of one (1) sheet; a

Wetlands/Transition Area Investigation prepared by David C. Krueger, Environmental Technology Inc., dated February 4, 2022, unrevised; and a compendium of photographs of the Property and the surrounding neighborhood.

7. 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.

8. Kshitij Bhatia and Niyati Shah-Bhatia, the Applicants, having an address of 11 Parkwood Lane, were duly sworn according to law. Mr. Bhatia testified that the proposed project includes the removal of an existing rear yard patio and wood deck and the 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. He explained that the project requires variance 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 by the proposed covered porch.

9. 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 Lot 20 (173 Somerville Road) faces his back yard, there is no conforming location for a pool. He explained that the proposed pool location would allow for safe access from the dwelling and that the existing vegetative screening between his property and Lots 24 and 20 is adequate, noting that none of the neighbors had expressed concern regarding the proposal or the adequacy of the existing screening. Mr. Bhatia stated that the existing dwelling 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.

10. The Applicants addressed the comments set forth in the March 4, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and stipulated, as a condition of

approval, to complying with same. The Applicants also addressed the comments set forth in the March 7, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn, and further stipulated to complying with same. On discussion of the March 8, 2022 Review Letter prepared by Ms. Dewitt, Chairperson of the Environmental Commission, the Applicants stipulated to utilizing native hardwood species if additional vegetative screening is required, as well as to the balance of the recommendations set forth therein.

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

### **DECISION**

12. 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 as to the side-yard setback deviation and proposed pool location both under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

#### **The Subsection "c(1)" Positive Criteria:**

13. As to the positive criteria for the "c(1)" or "hardship" variance relief for the requested setback and pool location deviations, 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 narrowness and undersized nature of the Property, the location and orientation of the adjacent dwellings, the existing septic field, and the existence of on-site wetlands. Here, the proposed pool is not to the rear of the adjoining dwelling on Lot 24 (19 Parkwood Lane) to the east and Lot 20 (173 Somerville Road) to the south/rear. The proposed pool would have to be moved closer to the septic field and on-site

wetlands, to comply with the pool location requirement and locating the pool in said location would result in potential disturbance within the wetlands buffer.

14. The Board 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.

15. As to the requested relief for the side-yard setback deviation associated with the proposed porch roof, the Board recognizes that said porch will replace an existing wood deck on the rear of the dwelling. The Board further recognizes that the proposed side-yard setback would have been conforming prior to 1999, when the minimum side yard requirement increased from 20’ to 50’. Here, the pre-existing nonconforming side setback of the existing dwelling, which will remain, is only 39.7’, while the proposed setback measured to the proposed porch roof is 48’. As such, the Board recognizes that the requested variance relief is a function of the existing conditions, as well as an amendment to the Land Development Ordinance. The Board further recognizes that the proposed setback does not exacerbate the existing non-conforming side-yard setback deviation.

16. The Board 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. Therefore, the Board finds that the Applicants have demonstrated the positive criteria for the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

**The Subsection “c(2)” Positive Criteria:**

17. As to the positive criteria for “c(2)” or “flexible c” variance relief for the side-yard



setback and pool location deviations, 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 proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that the proposed improvements will be screened by the dwelling itself, as well as the existing and proposed landscaping. The Board further recognizes that locating the proposed pool in a conforming location would require additional disturbance in an area that is more steeply sloped, as well as the potential disturbance of wetland buffer areas, 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 conditions set forth below. Therefore, the Board finds that the Applicants have demonstrated the positive criteria for the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

**The Subsection "c(1)" and "c(2)" Negative Criteria:**

18. 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.

19. 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 will be sufficiently screened both by the existing and proposed

landscaping, as well as the dwelling itself, 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 no member of the public commented on, or objected to, the proposal.

20. 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 deviations are relatively modest in nature and certainly do not rise to the level of constituting a rezoning of the Property.

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, 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 March 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); and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 6th day of April, 2022, that the application of **KSHITIJ BHATIA and NIYATI SHAH-BHATIA**, 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 partial wetlands delineation shown on the plans shall be completed to show wetlands and wetlands buffer boundaries for the entire property, and all wetlands and buffers 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;

- (3) If any portion of the proposed pool fence, or any other land disturbance, is within wetlands or a wetlands buffer area, the Applicants shall document that the fence or other disturbance complies with all Freshwater Wetlands Protection Act Rules, or has otherwise been approved by NJDEP, prior to issuance of a construction permit;
- (4) The Applicants shall submit a tree protection, removal, and replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance. Any proposed replacement trees shall be native hardwood species to the extent practical;
- (5) 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;
- (6) The Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans;
- (7) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (8) The area between the pool and wall to the south shall be reviewed by the Applicants’ engineer and revised as required to ensure surface water has a minimum 2% graded path out between the pool and the southerly wall and same shall be subject to the review and approval of the Township Engineering Department;
- (9) The Applicants shall revise the plans to include the proposed length of the tracking pad and same shall comply with the New Jersey Soil Erosion and Sediment Control manual details;
- (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:        Baumann, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed:        NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of April 6, 2022.

*Cyndi Kiefer*

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

Dated: April 6, 2022.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**GEOFFREY and MICHELLE YOCHUM  
Case No. ZB22-001**

**RESOLUTION**

WHEREAS, **GEOFFREY and MICHELLE YOCHUM** (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 (1) construction of a one-story, 268 square foot kitchen addition, and (2) expansion of an existing rear deck so that the deck meets the new exterior door on the addition, to be located on property identified as Block 6701, Lot 17 on the Tax Map, more commonly known as 58 Penwood Road (the “Property”):

1. A variance for a proposed lot coverage of 16.24%<sup>1</sup>, whereas the existing lot coverage is 15.57%, and the maximum permitted lot coverage in the R-4 (1 acre) Residential Zone is 15%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
2. A variance for an existing shed having a rear-yard setback of 4 feet, whereas the minimum required rear-yard setback in the R-4 (1 acre) Residential Zone is 20 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance<sup>2</sup>; and

WHEREAS, a public hearing on notice was held on such application on March 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 slightly undersized and slightly narrow, corner lot with frontage

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<sup>1</sup> The Applicants amended their initial application to request a proposed lot coverage of 16.56%.

<sup>2</sup> The Applicants amended their initial application to request relief for an existing shed.

on Penwood Road and Oxbow Lane, located in the R-4 (1 acre) Residential Zone. It is presently improved with a two-story frame dwelling, shed, wood deck, pavers, inground pool with concrete surround, asphalt driveway, and walkways.

3. The Applicants propose to construct a one-story, 268 square foot kitchen addition to the rear, westerly corner of the existing dwelling, and to expand an existing rear deck so that the deck meets the new exterior door on the addition. The requested variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).

4. The Applicants' proposal is depicted on Addition and Alteration Plans prepared by Jonathon E. Booth, R.A., dated January 7, 2022, unrevised, same consisting of three (3) sheets. The Applicants also submitted a Survey prepared by David J. Von Steenburg, P.L.S., dated December 13, 2021, unrevised, same consisting of one (1) sheet.

5. David Schley, PP, AICP, the Board Planner, and Thomas J. Quinn, PE, CME, the Board Engineer, both were duly sworn according to law.

6. Geoffrey and Michelle Yochum, the Applicants, having an address of 58 Penwood Road, was duly sworn according to law. Ms. Yochum testified that the Applicants propose to construct a one-story kitchen addition to the rear, westerly corner of the existing dwelling. Ms. Yochum further testified that the proposal includes the expansion of an existing rear deck, and that same requires variance relief for exceeding the maximum allowable lot coverage. She explained that the proposal will create a more spacious kitchen/dining area that will be able to accommodate larger family dinners and gatherings.

7. Jonathon E. Booth, R.A., having a business address of 33 Bullion Road, Basking Ridge, 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. Booth provided a brief

description of the Property, which is an undersized, narrow, corner lot, located in the R-4 Zone. On questioning, he advised the Board that he had taken the photographs submitted with the application in late December of 2021, and confirmed that same accurately depict the Property as it currently exists.

8. Mr. Booth testified that the proposed addition is conforming as to the required property setbacks and he confirmed that the only variance relief required is for the excess 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 Applicants purchased it.

9. The Board Planner, Mr. Schley, explained that an older Survey of the Property showed that the Property was 500 square feet larger than what actually existed and, therefore, the prior improvements appeared to be more conforming as to lot coverage. Mr. Schley further explained that, when the current Survey was done, the mistake in the square footage was corrected, resulting in a correction in the total existing lot coverage.

10. The Board discussed the existing hot tub and pergola, both of which appeared on aerial photographs, but were not included in the lot calculations submitted with the application. On questioning, Mr. Booth testified that those items increased the lot coverage percentage to 16.56%, whereas 15% is permitted, and the Applicants amended the application accordingly.

11. Mr. Booth introduced into evidence, as **Exhibit A-1**, a compendium of four (4) color photographs of an existing “Rubbermaid” shed. Mr. Yochum confirmed that the shed is located within the rear-yard setback, however, he explained 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 the application be amended to request

variance relief for an accessory structure (shed) encroaching into the rear-yard setback.

12. The Applicants stipulated, as a condition of approval, to complying with the comments and recommendations set forth in the March 4, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley and the March 7, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn.

13. David Nash, having an address of 61 Archgate Road, was duly sworn according to law and expressed his support for the Applicants' proposal.

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

### **DECISION**

15. 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 proposed impervious coverage exceedance (primarily resulting from the new addition) and rear-yard setback deficiency associated with an accessory structure (the existing shed), pursuant to N.J.S.A. 40:55D-70(c)(2).

16. As to the positive criteria for the subsection "c(2)" or "flexible c" variance relief for the excessive lot coverage and non-conforming rear-yard shed setback, 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, improves the housing stock, and otherwise promotes the general welfare. In this regard, the Board recognizes that proposed addition will allow the Applicants to accommodate their family and more efficiently



utilize their Property. As to the rear-yard shed setback deviation, the Board finds that locating the shed in a conforming location would result in the shed being more visible to the adjacent property owners as the existing fence would no longer screen the shed from view. As such, the non-conforming location of the shed presents a better zoning alternative than a conforming location. Further, 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. As such, the Board finds that the Applicants have satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70(c)(2).

17. As to the negative criteria for the requested 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.

18. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not be substantially out of character with the existing neighborhood and will not have a substantial negative impact on the surrounding properties. In this regard, the Board finds that the Applicants have demonstrated that the proposed improvements will be sufficiently screened, both by the existing vegetation and the dwelling itself, and that the conditions stipulated to by the Applicants will further alleviate any detrimental impact of the proposed improvements on adjacent properties. The Board also recognizes, in this regard, that the adjacent neighbor expressed support for the Applicants’ proposal, further evidencing the lack of detriment to the neighborhood.

19. 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 Ordinance, particularly since the requested deviation is relatively modest in nature and certainly does not rise to the level of constituting a rezoning of the Property.

20. As such, the Board finds that the Applicants have satisfied 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 lot coverage and rear-yard shed setback variance relief under subsection (c)(2).

WHEREAS, the Board took action on this application at its meeting on March 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 6th day of April, 2022, that the application of **GEOFFREY AND MICHELLE YOCHUM**, 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 satisfy all outstanding municipal tax and other municipal obligations to date;
- (3) The lot coverage calculations shown on the plans shall be revised to reflect that only the "open" portions of the existing/proposed deck are not counted as coverage. The portions of deck occupied by the pergola (which is not shown on the plan) and the hot tub shall be counted as coverage;
- (4) The proposed deck expansion shall be constructed as an "open deck", i.e. a raised platform not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open;
- (5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;

- (6) The 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
- (7) 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, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of April 6, 2022.

*Cyndi Kiefer*

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

Dated: April 6, 2022.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**KARL and SHARON MALONEY  
Case No. ZB22-003**

**RESOLUTION**

WHEREAS, **KARL and SHARON MALONEY** (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 (1) an inground swimming pool with attached spa, (2) an approximately 17 foot high, 24 foot by 24 foot (576 square foot) shade structure/pavilion, and (3) a 2,372 square foot paver patio/walkway to the rear of the existing dwelling, same to be located on property identified as Block 9501, Lot 29 on the Tax Map, more commonly known as 109 Woodman Lane (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 (the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on March 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 Property consists of a 2.02 acre lot located in the PUD-5 (The Hills) Residential Zone, with frontage on the Woodman Lane cul-de-sac. The Property is presently improved with a two-story single-family dwelling, flagstone patio and walkway, fire pit, and macadam driveway. The Property is encumbered by wetlands and wetland transition areas.

2. The Applicants propose to construct (1) an inground swimming pool with attached spa, (2) an approximately 17 foot high, 24 foot by 24 foot (576 square foot) shade structure/pavilion, and (3) a 2,372 square foot paver patio/walkway to the rear of the existing dwelling. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the 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 dwelling on adjoining Lot 30 (121 Woodman Lane) to the west. Due to the curve in Woodman Lane, the dwelling on Lot 30 is angled toward the Applicants’ property, such that the proposed pool would have to be moved approximately 75 feet further back on the Applicants’ lot, and located entirely within a wetlands transition area, to comply with the pool location requirement. The pool location variance is governed by the criteria of N.J.S.A. 40:55D-70(c).

3. The Applicants’ proposal is depicted and described on a Proposed Pool Plot Plan/Grading Plan and Soil Erosion and Sediment Control Plan prepared by George R. Gloede, Jr., P.E., dated August 23, 2021, last revised January 20, 2022, same consisting of two (2) sheets; Proposed Aerial View also prepared by Mr. Gloede, dated January 20, 22, same consisting of one (1) sheet; Proposed Concrete Pool Details, also prepared by Mr. Gloede, dated October 4, 2021, unrevised, same consisting of one (1) sheet; Pavilion Specifications and Plans prepared by Country Lane Woodworking, LLC, undated, same consisting of nine (9) sheets; a Wetlands/Waters Evaluation prepared by Brian P. Cramer, of Cramer Ecological Services, LLC, dated January 3, 2021. The Applicants also submitted a compendium of four (4) photographs of the Property, same consisting of one (1) sheet; a compendium of eight (8) renderings of the proposed improvements, same consisting of one (1) sheet; and a Map of Survey prepared by David B. Swanson, P.L.S., dated June 29, 2012, unrevised, same consisting of one (1) sheet.

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

5. Sharon Maloney, one of the Applicants, having an address of 109 Woodman Lane, was duly sworn according to law. She testified that the proposed project - construction of an inground pool, spa, patio/walkways and shade pavilion - requires relief for the location of the pool, as same is not behind the rear building line of adjacent dwellings. Ms. Maloney explained that she has two active children and that a pool would provide them with outdoor recreation. On questioning, she testified that she had taken the photographs that were submitted with the application in February 2022, and she confirmed that they accurately depict the Property as it currently exists.

6. Dixon Munds, the owner of Paradise Pools and Spas, was duly sworn according to law. He testified that, because Woodman Lane is curved, 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. Mr. Munds noted that the proposal does not require variance relief for the proposed impervious coverage. On questioning, Mr. Munds confirmed that the Applicants would implement stormwater management measures as required, and that the existing screening between the Property and adjacent Lot 30 would be supplemented.

7. The Applicants stipulated to complying with the comments and recommendations set forth in the March 4, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley; the March 7, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn; and to the Environmental Commission's request that they utilize native hardwood species and comply with the "best management practices" available when discharging pool water.

8. On questioning, Ms. Maloney confirmed that the Applicants would only be utilizing the proposed pool for their personal use and that same would not be utilized as a swim-club or anything else that would permit the Applicants to charge an admission fee to utilize the pool.

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

### **DECISION**

10. 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 as to the proposed pool location, under both of the alternative bases for relief under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

#### **The Subsection "c(1)" Positive Criteria:**

11. As to the positive criteria for the subsection "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 as the owners of the Property. The Board notes that, due to the curve in Woodman Lane, the dwelling on adjoining Lot 30 (121 Woodman Lane) to the west side is angled toward the Property, such that the proposed pool would have to be moved approximately 75' further back to comply with the pool location requirement. If the pool were to be so located, it would be entirely located within a wetlands transition area. The Board finds that the Applicants have demonstrated that the hardship that would result from the strict application of the zoning ordinance would not be the result of conditions that were "self-created" by the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the

positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1).

**The Subsection “c(2)” Positive Criteria:**

12. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for the pool location, 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 proposal enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that locating the proposed pool in a conforming location would require significant disturbance of wetlands transition areas to the rear of the dwelling. Moreover, locating the pool so far from the dwelling renders it unsafe for the family and guests, particularly young children. The Board finds that locating the pool in the proposed nonconforming location constitutes a better planning alternative than locating it in a conforming location. Additionally, the Board finds that the proposed location will allow the Applicants to maintain a clear line of sight of their children, whereas a conforming location would be much further from the dwelling. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated conditions set forth below. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2).

**Negative Criteria:**

13. As to the negative criteria required for the 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 Township's 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 not be out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. The Board notes that the proposed pool/pavilion is approximately 140 feet from the dwelling on Lot 30 and will be sufficiently screened by both the existing and proposed landscaping. Moreover, 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 many of the dwellings in the neighborhood also have pools, such that the proposal will not be inconsistent with the existing neighborhood. Moreover, the Board recognizes that no member of the public objected to the Applicants' proposal.

14. 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 Township's Master Plan or Zoning Ordinances, particularly since pools are permitted structures in the PUD-5 Zone. The Board further finds that granting the requested relief certainly does not rise to the level of constituting a rezoning of the Property. As such, the Board finds that the Applicants have satisfied the negative criteria for the pool location variance relief.

15. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and the negative criteria for the requested pool location 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 March 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 6th day of April, 2022, that the application of **KARL AND SHARON MALONEY**, 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 only utilize the proposed pool for their personal use and same shall not be utilized as a swim-club or anything else that would permit the Applicants to charge an admission fee to utilize the pool;
3. The Applicants shall pay all outstanding property taxes and other municipal obligations prior to issuance of any zoning or building permits;
4. Any/all on-site wetlands and wetlands transition areas shall be delineated on the plans and 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;
5. The Applicants shall confirm that any disturbance of the wetland transition area by the existing or proposed fence complies with all Freshwater Wetlands Protection Act Rules, or that it has otherwise been approved by the NJDEP, prior to the issuance of a construction permit;
6. The Applicants shall revise the plans to depict the 150 foot riparian zone required pursuant to NJDEP Flood Hazard Area Control Act Rules, and to include a note documenting compliance with those rules, as outlined in the submitted Wetlands/Waters Evaluation report, prior to the issuance of a construction permit;
7. The Applicants shall submit a tree protection, removal and replacement plan, as applicable, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance. The Applicants shall utilize native hardwood species where practicable in accordance with the recommendations from the Environmental Commission;
8. Any proposed exterior lighting shall be directed downward or otherwise shielded so that glare, directed light or reflection will not be a nuisance to adjoining properties;
9. Stormwater infiltration measures shall be provided in accordance with Section 21-42.11 of the Ordinance. The proposed 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. Perc test results in support of the proposed design shall be provided at that time;

10. The Applicants shall obtain certification by the Somerset-Union Soil Conservation District;
11. The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
12. The Applicants shall revise the plans to include the basis for the K value determination of K-3 and same shall be subject to the review and approval of the Township Engineering Department;
13. The Applicants shall submit drawdown calculations for the drywell to ensure that the drywells will evacuate their stored volume within 72 hours and same shall be subject to the review and approval of the Township Engineering Department;
14. The Applicants shall review and, if necessary, revise the grading plans, specifically the spot grades depicted along the southerly side of the pool patio. It is recommended that all spot grades at the edge of this patio are made lower than the pool coping to ensure proper drainage and same shall be subject to the review and approval of the Township Engineering Department;
15. Based on the grading shown over the drywells, it appears that the grade over these structures will be less than 6” at the northwest portion of the system. The Applicants’ engineer shall review and revise the grading as necessary and same shall be subject to the review and approval of the Township Engineering Department;
16. The Applicants shall revise the grading plans to include spot grades at the corners of the proposed shade structure. The Applicants shall also revise the plans to provide a detail as to how the shade structure will be mounted to the proposed brick paver surface and same shall be subject to the review and approval of the Township Engineering Department;
17. The Applicants shall revise the plans to include grate elevations and inverts for the proposed drainage system;
18. 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;
19. 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
20. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one (1) year of the date of this Resolution.

ROLL CALL VOTE:

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

Those Opposed:        NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment  
of the Township of Bernards at its meeting of April 6, 2022.

*Cyndi Kiefer*

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

Dated: April 6, 2022.