

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v2
Regular Meeting
July 6, 2022

CALL TO ORDER

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

FLAG SALUTE

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

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the Zoning 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, NJ, 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 Zoning Board of Adjustment. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM.

ROLL CALL:

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

On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible and in favor, the absences of Mr. Cambria, Mr. Helverson, Mr. Kraus and Mr. Pavlosky were excused.

APPROVAL OF MINUTES

June 8, 2022 – Regular Session – On motion by Mr. Tancredi, seconded by Ms. Baumann, all eligible in favor and carried, the minutes were adopted as amended.

APPROVAL OF RESOLUTIONS

[Cook, Vincent J. & Lisa](#); Block 5602 Lot 3; 34 Gerard Avenue; ZB22-005 (approved) - Mr. Tancredi moved to approve the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

[Silver Living LLC](#); Block 1607, Lot 2; 14 North Maple Avenue; ZB22-004 (approved) - Ms. Baumann moved to approve the resolution as amended. Ms. Pochtar seconded.

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

Motion carried.

RESOLUTION #22-06 – Award of Change Order #1 – Professional Services Contract for Board Attorney, Steven K. Warner, Esq. - Ms. Pochtar moved to approve the resolution as drafted. Mr. Tancredi seconded.

Roll call: Aye: Amin, Baumann, Genirs, Pochtar, Tancredi
Nay: NONE
Motion carried.

PUBLIC HEARING (continued from 06/16/2022)

Finley Real Estate LLC; Block 1801, Lot 1; 55 South Finley Avenue; Preliminary/Final Site Plan, Variances; ZB21-031
Mr. Warner announced that this application would be carried to 09/15/2022 *with no further notice required*. The meeting will be held in person in the Warren Craft Meeting Room, 1 Collyer Avenue at 7:30 PM.

Ms. Pochtar recused herself from participating in the following hearing.

COMPLETENESS AND PUBLIC HEARING

Kochek, Peter & Carrie; Block 1802, Lot 22; 143 South Finley Avenue; Bulk Variances; ZB22-006
Present: Jonathan E. Booth, RA, Architect for the Applicants
Peter & Carrie Kochek, Applicants

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

The following were entered into evidence:

- **Exhibit A-1**, colorized version of page S-2 of plans dated 03-24-2022 prepared by Mr. Booth showing the existing and proposed locations of the garage in relation to the principal dwelling
- **Exhibit A-2**, a colorized copy of a page from the Township's tax map showing the subject property and surrounding area prepared by Mr. Booth

Peter Kochek, Applicant residing at 143 South Finley Avenue, testified that the proposed project, demolition of an existing two-car detached garage and construction of a larger two-car detached garage, requires relief for encroachment into the side yard setback (south) and for exceeding the maximum lot coverage allowed. He stated that the existing garage is barely large enough to hold one car and may have structural issues due to its old age.

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 confirmed that in March of 2022, he had taken the photos that were submitted with the application and that they accurately depict the property as it currently exists. Using **Exhibit A-1**, he testified that the existing garage, built in the mid-century, is in the back yard behind the deck. By moving it to the proposed location (behind the driveway), the Applicants will have direct access to their back yard from the deck. He further testified that because of the narrowness of the lot, the garage must be located to the rear of the dwelling rather than the side, requiring a longer driveway and, hence more coverage. The proposed turnaround addition to the driveway also creates lot coverage however, it will alleviate a safety issue since currently, vehicles must back out onto South Finley Avenue. Mr. Booth stated that the lot's narrowness also drives the need for side yard setback relief because if the proposed garage is constructed in a conforming location, it will create a usability issue. He also noted that on other properties, he has seen the required 10-foot setback area used for the storage of items such as cars, trailers and lawnmowers when it's supposed to be a buffer. Here, the requested 5-foot setback, because of its diminished size, would truly serve as a buffer. Finally, he stated that currently, the Applicants' cars are parked outside of the existing garage. The new garage would enable them to park their cars inside and therefore eliminate an eyesore.

Using **Exhibit A-2**, Mr. Booth noted that the B-1 zone is one lot away from the subject property. That zone allows 75% lot coverage and requires 0' for side yard setbacks and he opined that this is a stark break from the R-7 zone (subject property) which allows only 20% coverage and requires 10' for side yard setbacks.

Referring to the rear of the proposed garage, Mr. Booth explained that the first floor will serve as a shed and area for recyclables. The staircase will provide access to the second floor of the garage which will be a storage area since there is no attic in the dwelling.

Both Mr. and Mrs. Kochek had spoken to neighbors about the project and had heard no negative comments.

The comments made in memos from Mr. Schley (07/01/2022), the Board Engineer (Thomas J. Quinn, PE, CME) (06/21/2022) and the Environmental Commission (06/28/2022) were addressed to the satisfaction of the Board.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions. Todd Edelstein, 172 Riverside Drive, questioned whether there will be a gas line. Mr. Kochek responded that in the future, he would like to run a gas line for an emergency generator. Because the pad for the generator will create additional impervious coverage, Mr. Kochek amended his variance request to include 20 sq. ft. of extra lot coverage. Hearing no further questions, that portion of the hearing was closed and the hearing was opened for comments. Hearing none, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" and 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 approve the application *as amended*, subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Amin seconded.

Roll call:	Aye:	Amin, Baumann, Genirs, Tancredi
	Nay:	NONE

Motion carried.

Ms. Pochtar returned to the dais.

COMPLETENESS AND PUBLIC HEARING

Patel, Dhaval & Nipuben; Block 4701, Lot 2.07; 17 River Farm Lane; Bulk Variance; ZB22-010

Present: Dhaval Patel, Applicant

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

Dhaval Patel, Applicant residing at 17 River Farm Lane, testified that the proposed project, installation of an in-ground pool, pavilion, outdoor kitchen and walkways/patios, requires relief for the location of the pool which is *not* behind the rear building line of existing residential structures on adjoining lots. He stated that because of the orientation of his house along with the easements on the subject property, there is no conforming location for a pool. Mr. Patel confirmed that in May 2022, he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists. He added that he had spoken to the neighbors and all were very supportive of the project. Finally, he asked, should the application be approved, if he could begin the construction permit process prior to receiving the memorializing resolution. Mr. Patel was advised to consult with Mr. Schley.

The comments made in memos from Mr. Schley (07/01/2022), the Board Engineer (Thomas J. Quinn, PE, CME) (06/21/2022) and the Environmental Commission (06/28/2022) were addressed to the satisfaction of the Board.

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

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(1)" or "hardship" variance relief. Ms. Baumann 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. Pochtar seconded.

Roll call:	Aye:	Amin, Baumann, Genirs, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Leis, Matthew/Klanchnik, Colleen; Block 1614, Lot 12; 97 Juniper Way; Bulk Variance; ZB22-012

Present: Thomas Baio, AIA, Architect for the Applicants

Matthew Leis, Applicant

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

The following was entered into evidence:

- **Exhibit A-1**, a colorized version of sheet C-1 of plans prepared by Mr. Baio and dated 04/29/2022

Matthew Leis, Applicant residing at 97 Juniper Way, testified that the proposed project, expansion/renovation of the existing dwelling including a front porch, additions and garage expansion, requires relief for exceeding the maximum lot coverage allowed. He noted that the existing lot coverage exceeds the maximum allowable, however he proposed to remove a patio, a shed and a portion of the driveway, which would create a net reduction in the coverage. Finally, Mr. Leis testified that the neighbors he had spoken to support the proposal.

Thomas Baio, AIA, architect with a business address of 343 Millburn Avenue, Millburn, NJ, was accepted by the Board as an expert in the field of architecture and gave a brief description of the proposed project. Using **Exhibit A-1**, Mr. Baio noted where the coverage is to be removed/added and reiterated that this project would result in a net reduction in coverage. He stipulated, as a condition of approval, that the proposed front porch would remain open. Finally, Mr. Baio confirmed that in October 2021, he took the pictures that were submitted with the application and that they accurately depict the property as it currently exists.

The comments made in memos from Mr. Schley (07/01/2022), the Board Engineer (Thomas J. Quinn, PE, CME) (06/21/2022) and the Environmental Commission (06/28/2022) were addressed to the satisfaction of the Board.

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

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "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. Mr. Tancredi seconded.

Roll call:	Aye:	Amin, Baumann, Genirs, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Pruss, Christopher & Lisa; Block 5504, Lot 9; 85 Spring House Lane; Bulk Variance; ZB22-009

Present: Christopher & Lisa Pruss, Applicants

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

The following were entered into evidence:

- **Exhibit A-1** - Picture of sample type of "Hamptons" style pool
- **Exhibit A-2** - Picture of sample lawn stake to depict how the pool cover will be secured to the ground
- **Exhibit A-3** - Picture of the circular patio area to the rear of the dwelling surrounded by bushes
- **Exhibit A-4** - Picture of the back patio
- **Exhibit A-5** - Copy of Exhibit A-3 with a demarcation of the 243 sq. ft. area of existing patio that the Applicants agreed to remove to reduce the total proposed lot coverage

Christopher Pruss, Applicant residing at 85 Spring House Lane, testified that the proposed project, installation of an inground pool, requires relief for exceeding the maximum lot coverage allowed. He stated that the existing (unapproved) coverage already exceeds the maximum allowed and that most of the overage was due to a rear patio which was installed by a previous owner without a permit. Noting that the patio had been there for about 20 years with no complaints from the neighbors, Mr. Pruss requested that the patio be allowed to remain. Finally, he

confirmed that the coverage percentage requested would be corrected to include the patio steps near the pool area.

The Applicants reviewed each of the first four (4) exhibits with the Board. A discussion ensued between the Board and the Applicants aimed at reducing the overall lot coverage either by a reduction in the proposal request or by eliminating some existing coverage. Using a copy of **Exhibit A-3**, Mrs. Pruss designated an existing walkway that could be removed and stipulated as a condition of approval, that the total lot coverage would not exceed 24.35%.

The comments made in memos from Mr. Schley (07/01/2022), the Board Engineer (Thomas J. Quinn, PE, CME) (06/21/2022) and the Environmental Commission (06/28/2022) were addressed to the satisfaction of the Board.

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

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

Roll call:	Aye:	Amin, Baumann, Genirs, Tancredi
	Nay:	Pochtar

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Gilbert, Michael & Catherine; Block 6301, Lot 34.03; 18 Belmont Court; Bulk Variance; ZB22-008

Present:	David J. Egarian, PE, Engineer for the Applicants
	Frederick B. Zelle, Esq., Attorney for the Applicants

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

The following was entered into evidence:

- **Exhibit A-1** – A colorized version of the Pool Location and Grading Plan, prepared by D. J. Egarian & Associates, dated 06/03/2022

Frederick B. Zelle, Esq., attorney with a business address of 53 Division Avenue, Millington, NJ, entered his appearance on behalf of the Applicants who, he explained, were unable to appear because of a medical emergency. He stated that the proposed project, installation of an inground pool with pervious decking on three (3) sides, requires relief for the location of the pool which is *not* behind the rear building line of existing residential structures on adjoining lots. The subject dwelling is located on the bulb of a cul-de-sac and although there is a conforming location on the property, it is far from the house and would represent a safety issue for the Applicants' small children. Mr. Zelle added that the existing lot coverage exceeds the maximum allowed however as part of the project, a patio and portion of the driveway will be removed so that the property will then be in compliance as far as lot coverage. Mr. Zelle confirmed that the photos submitted with the application were taken by him in March of 2022 and accurately depict the property as it currently exists. Finally, he stated that he was unaware of any negative comments from neighbors.

David J. Egarian, PE, with a business address of 271 Route 46, Fairfield, NJ, was accepted by the Board as an expert in the field of civil engineering and, using **Exhibit A-1**, he described the subject property and the proposed project.

The comments made in memos from Mr. Schley (07/01/2022), the Board Engineer (Thomas J. Quinn, PE, CME) (06/21/2022) and the Environmental Commission (06/28/2022) were addressed to the satisfaction of the Board.

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

Mr. Zelley provided a summary of the relief required and opined that the testimony provided had satisfied the statutory requirements for the Board to grant the requested relief.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" variance relief. Ms. Baumann 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. Tancredi seconded.

Roll call:	Aye:	Amin, Baumann, Genirs, Pochtar, Tancredi
	Nay:	NONE

Motion carried.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

Moved by Mr. Tancredi, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 10:30 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as amended 08-03-2022

07/15/2022 dsws

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**VINCENT and LISA COOK
Case No. ZB22-005**

RESOLUTION

WHEREAS, **VINCENT and LISA COOK** (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 of a two-story addition to the north side of the existing dwelling and conversion of an existing two-car garage into a family room, on property identified as Block 5602, Lot 3 on the Tax Map, more commonly known as 34 Gerard Avenue (the “Property”):

- (1) A variance for a front-yard setback of 53.4 feet for the proposed addition, whereas the existing front-yard setback is 75.8 feet, and whereas 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; and
- (2) A variance for a rear-yard setback¹ of 32 feet to the existing dwelling and 72 feet to the proposed addition, whereas the existing rear-yard setback is 0 feet, and whereas the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, the Applicants are proposing the same addition as was approved by the Board in 2018 (Case no. ZB18-018); however, since construction of the addition did not commence within one year of the date of the resolution (August 8, 2018), the prior variance approval expired and the Applicants have filed this entirely new application seeking approval of the same proposal that was approved in 2018; and

¹ Pursuant to the Township Stream Buffer Conservation Ordinance, adopted in 2001, when a yard adjoins a stream, setbacks are measured from the centerline of zone two of the stream buffer. The Applicants’ dwelling is presently located within the stream buffer, such that the existing rear yard setback is 0 feet. As part of their proposal, the Applicants are requesting a zone two waiver, which would eliminate a portion zone two and provide for the proposed setbacks indicated above, which are measured from zone one of the stream buffer.

WHEREAS, a public hearing on notice was held on such application on June 8, 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 complete.
2. The Property is a narrow lot located on 34 Gerard Avenue and is presently improved with a bi-level brick and frame dwelling, deck, gravel area and associated walkways and driveway.
3. The Applicants' Property is traversed front-to-rear by a tributary to Harrison Brook. This stream enters the Applicants' northerly front yard in an underground pipe, and surfaces at a headwall in the rear yard. The majority of the Property is occupied by stream buffer conservation areas and/or wetlands and wetlands transition areas. As such, the area where a conforming addition could be constructed is limited.
4. The rear of the Applicants' dwelling is located within the 75 foot wide stream buffer conservation area which lies adjacent to the above-ground portion of the stream. While the Applicants propose no disturbance within the stream buffer area, they are requesting a zone two waiver to eliminate the zone two portion of stream buffer that extends north of the headwall. The requested waiver would provide a more conforming rear yard setback for the proposed addition, and also for the existing dwelling. Pursuant to §21-14.4.b.3(d):

“If the applicant submits a stream buffer management plan, in consideration of Subsection 21-14.4a, that proves to the satisfaction of the approving authority that a proposed vegetative or other enhancement to Zone One will eliminate the need for a Zone Two or a portion of Zone Two, the approving authority shall waive the requirement for a Zone Two or a portion of Zone Two, provided that the approved stream buffer management plan is implemented by the applicant.”

5. The Applicants propose to construct a two-story, 1,448 square foot addition to the north side of the existing dwelling, including a two-car garage (724 square feet) on the first floor and a master bedroom/bathroom (724 square feet) on the second floor. The Applicants also propose to convert an existing two-car garage into a family room.

6. The Applicants' proposal is depicted on engineering plans prepared by Christopher J. Aldrich, P.L.S., and Gregory E. Yannaccone, P.E., dated May 24, 2018, last revised February 9, 2022, same consisting of two (2) sheets and architectural plans prepared by Jonathon E. Booth, A.I.A., dated March 2, 2022, unrevised, same consisting of three (3) sheets. The Applicants also included a copy of the September 18, 2018 permit (FWTW4R transition SAW redevelopment) issued by the New Jersey Department of Environmental Protection, a completed National Flood Insurance Program Elevation Certificate and four (4) photographs of the Property.

7. The Property is located in the R-4 (1 acre) residential zone and the requested variances for the front- and rear-yard setback deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

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

9. Vincent Cook, having an address of 34 Gerard Avenue, was duly sworn according to law. Mr. Cook testified that he, his wife, and their child presently reside in the existing dwelling. He explained that the Applicants did not pursue construction of the project post-approval because they were considering relocating to southern New Jersey to be near family, but as a result of the COVID pandemic, they decided to renew the project.

10. Mr. Cook further testified that the existing garage would be converted into a family room and that the proposed addition would not be used as a separate living space for a non-family

member. On further questioning, Mr. Cook confirmed that the dwelling would be occupied by a single housekeeping unit.

11. Jonathon E. Booth, R.A., having an 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 testified that the proposed project was identical to the project approved by the Board in 2018.

12. Mr. Booth testified that the Property was severely constrained by wetlands, a riparian zone, a stream buffer, and a 20-foot-wide drainage and sanitary sewer easement. He explained that, because of the constraints on the Property, the proposed addition could not be located in a conforming location. Mr. Booth testified that the Property also contains a large drainage pipe and associated easement and that the surveyed location of the pipe indicates that the present easement location does not correlate well with the actual pipe location. He further testified that the Applicants had retained Yannaccone Villa & Aldrich, LLC, to locate the pipe. The Applicants stipulated, as a condition of approval, to granting an easement containing the protected areas to the Township.

13. Mr. Schley, the Township/Board Planner, explained that the Applicants' proposal is affected by the Stream Buffer Conservation Ordinance, which was adopted in 2001. Mr. Schley explained the unnamed tributary to the Harrison Brook required a 75-foot-wide stream buffer conservation area. He further explained that the stream buffer consists of a 25-foot-wide Zone One buffer located adjacent to the stream, plus a 50-foot-wide Zone Two buffer located adjacent to the Zone One buffer. Here, the Applicants' dwelling is located within the stream buffer, such that the existing rear yard setback is zero feet. As such, the Applicants are requesting a Zone Two Waiver in order to eliminate a portion of Zone Two so as to reduce the magnitude of the rear-yard

setback encroachment and better accommodate the proposed expansion of the dwelling. Mr. Schley explained that if the rear-yard setbacks were measured from the Zone One buffer, rather than the Zone Two buffer, the existing dwelling would be set back approximately 32 feet and the addition would be set back 72 feet. He further explained that waiving a portion of the Zone Two buffer area would not open that area of the Property up for development because the waiver area will remain subject to the New Jersey Department of Environmental Protection Freshwater Wetlands Protection Act rules. Mr. Schley explained that the construction required the Applicants to obtain a Special Activity Transition Area Waiver from the NJDEP. In short, while the increased setbacks would reduce the setback deviation, the location of the dwelling would not change and, visually, there would be no additional impact.

14. Mr. Schley explained that the Applicants proposed a stream buffer management plan mitigating any potential detriment, which consists of (1) soil erosion and sediment control measures to protect the stream during construction, and (2) the net reduction of over 800 square feet of driveway surface which results in improved stormwater runoff quality. He further explained that stormwater runoff flowing over a driveway is not considered clean runoff, whereas stormwater runoff from roof leaders and the roof surface is because less contaminants are picked up. The Applicants stipulated, as a condition of approval, to submitting a tree protection, removal, and replacement plan that would be subject to the review and approval of the Township Engineering Department.

15. The Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth in the June 2, 2022 Review Memo prepared by Mr. Schley and the June 6, 2022 Review Letter prepared by Mr. Quinn.

16. On questioning by the Board, Mr. Booth testified that the Applicants had taken the photographs of the Property submitted with the application in April of 2018 and that they constituted an accurate depiction of the Property as it exists.

17. On further questioning, Mr. Booth testified that the net reduction of the impervious coverage, and the project as a whole, would not impact the drainage patterns or negatively impact the stormwater management.

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

DECISION

19. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested waiver of a portion of the Zone Two stream buffer, and the requested variance relief for the front- and rear-yard setback deviations, under both N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

The c(1) Positive Criteria:

20. As to the positive criteria for “(c)(1)” or “undue hardship” variances, 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, as a result of unique conditions relating to the Property, which is narrow and constrained by a tributary to Harrison Brook and its associated buffer areas.

21. The Board recognizes that the proposed front- and rear-yard setback deviations are a function of measuring the rear-yard setback from the centerline of Zone Two of the stream buffer. The Township’s Stream Buffer Conservation ordinance (§21-14.4), adopted in 2001, generally requires a 75 foot wide stream buffer conservation area consisting of a 25 foot wide Zone One

located adjacent to the stream, plus a 50 foot wide Zone Two located adjacent to Zone One. The Board finds that it would be impractical for the Applicants to build a conforming addition that meets the rear-yard setback even with the Zone Two Waiver, let alone without it. The Board further finds that the Applicants have submitted an appropriate stream buffer management plan that will mitigate any detriments associated with the elimination of the Zone Two buffer area. Finally, the Board recognizes that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created.

22. As to the positive criteria for “(c)(2)” or “flexible c” variances, the Board finds that the proposed development will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. These benefits include providing a desirable visual environment, providing adequate light, air and open space, upgrading the housing stock, and otherwise promoting the general welfare. Moreover, by eliminating 800 square feet of driveway area, the expert testimony revealed that the Applicants will improve stormwater runoff quality. The Board finds that these benefits derived from the proposed development will substantially outweigh the relatively modest detriments associated with the variance relief sought, particularly given the conditions stipulated to by the Applicants.

23. Finally, the Board finds that the Applicants have satisfied the negative criteria for the requisite variance relief. 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. The Board considers, in this regard, that the relatively modest detrimental impact is mitigated by the proposed stream buffer management plan, and the other conditions stipulated to by the Applicants and set forth below.

Moreover, the Board recognizes that no member of the public objected to the proposal and, in fact, one of the most affected property owners expressed his support for the Applicants' proposal.

WHEREAS, the Board took action on this application at its meeting on June 8, 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 6 day of July, 2022, that the application of **VINCENT and LISA COOK** for variance relief as aforesaid, be and is hereby granted, subject to the following conditions (to the extent not already satisfied):

1. The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
2. The Applicants have obtained from the NJDEP a Special Activity Transition Area Waiver (Redevelopment) in order to allow disturbance of 724 sq. ft of wetlands transition area to construct the proposed improvements. The Applicants shall submit a copy of the NJDEP approval with their building permit application;
3. All wetlands and wetlands transition areas shall be contained within a wetlands conservation easement deeded to the Township. In the Applicants' case, this wetlands conservation easement shall also contain the stream buffer conservation area which would otherwise have been required to be within a stream buffer conservation easement. The wetlands conservation easement shall be prepared by the Township Attorney, and shall be executed by the Applicants and recorded with the Somerset County Clerk prior to issuance of a building permit. The easement boundary shall be delineated with Township standard markers, which must be bonded prior to issuance of a building permit and installed prior to issuance of a certificate of occupancy;
4. The Applicants shall provide replacement trees for the two existing trees that are shown to be removed. Evergreen plantings shall be provided as a buffer between the new driveway/garage area and Gerard Avenue. The tree protection, removal and replacement plan shall be subject to further review and approval by the Township Engineering Department prior to any land disturbance;
5. As noted on the Grading Plan, the existing drainage easement does not coincide with the existing storm pipe (underground stream). The Applicants shall remedy this situation by granting a new drainage easement. The new easement, which

may include extinguishing the existing easement if possible, shall be prepared by the Township Attorney, and shall be executed by the Applicants and recorded with the Somerset County Clerk prior to issuance of a building permit;

6. The exterior of the proposed addition shall be substantially similar in architectural components, materials, and colors to the exterior of the balance of the dwelling;
7. The Applicants' dwelling shall remain a single "dwelling unit" occupied by a single "housekeeping unit," as such terms are defined in the Land Development Ordinance;
8. The Applicants shall obtain an engineering permit prior to any work within the Township right-of-way;
9. The Applicants shall submit the completed National Flood Insurance Program Elevation Certificate to the Township Engineering Department, prior to the issuance of a building permit;
10. The portion of the wetlands boundary identified on the submitted Grading Plan as points A-1A, A-1B & A-1C shall be verified by the applicants' environmental consultant, to the satisfaction of the Township Engineering Department, prior to the Township accepting the wetlands conservation easement;
11. The Applicants shall employ best management practices to protect freshwater wetlands and to preserve trees during site work, until final site grading and restoration is completed;
12. 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;
13. 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
14. 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, 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 July 6, 2022.

Cyndi Kiefer

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

Dated: July 6 , 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**SILVER LIVING, LLC
Case No. ZB22-004**

RESOLUTION

WHEREAS, **SILVER LIVING, LLC** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking the following variance relief, in connection with the removal of an existing 2.5 story dwelling and replacement of same with a new 3,122 sq. ft., 2.5 story dwelling with an attached, basement level two-car garage, on property identified as Block 1607, Lot 2 on the Township Tax Map, more commonly known as 14 North Maple Avenue (the “Property”):

- (1) A variance for a proposed lot area of 8,416 square feet, whereas the minimum required lot area in the R-7 (1/2 acre) Zone is 21,780 square feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”);
- (2) A variance for a proposed improvable lot area of 440 square feet, whereas the minimum required improvable lot area is 5,000 square feet in the R-7 Zone, pursuant to Section 21-10.4.b and Table 401-A of the Ordinance;
- (3) A variance for a lot width along North Maple Avenue of 72 feet, whereas the minimum required lot width is 125 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance;
- (4) A variance for a lot width along East Allen Street of 115.89 feet, whereas the minimum required lot width is 156.25 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance;
- (5) A variance for a front-yard setback of approximately 24 feet from North Maple Avenue, whereas the existing front-yard setback is 30 feet and the minimum required front-yard setback is 40 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance;
- (6) A variance for a front-yard setback of approximately 18 feet from East Allen Street, whereas the existing front-yard setback is 8.9 feet, and the minimum required front-yard setback is 40 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance;

- (7) A variance for a side-yard setback (south) of 15.5 feet, whereas the existing side-yard setback is 28 feet, and the minimum required side-yard setback is 20 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and
- (8) A variance for a proposed lot coverage of 25.6%, whereas the existing lot coverage is 19.3%, and the maximum permitted lot coverage is 20%, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and

WHEREAS, a public hearing on notice was held on this application on June 8, 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 Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board previously reviewed the application and deemed it complete.
2. The Property is a significantly undersized, shallow corner lot, located at the intersection of North Maple Avenue and East Allen Street.
3. The Applicant proposes to remove an existing 2.5 story dwelling and to replace same with a new 3,122 sq. ft., 2.5 story dwelling, with an attached, basement level two-car garage.
4. The Applicant submitted a Variance Plan prepared by William G. Hollows, P.E., P.P., P.L.S., dated November 1, 2019, last revised December 20, 2021, same consisting of three (3) sheets and Architectural plans prepared by Douglas G. Battersby, R.A., dated January 3, 2022, same consisting of three (3) sheets. The Applicant also submitted a Survey prepared by William G. Hollows, P.E., P.P., P.L.S., dated November 8, 2019, last revised November 15, 2019, same consisting of one (1) sheet, and a compendium of six (6) photographs of the Property.
5. The Applicant seeks eight (8) bulk variances (4 “property-specific” variances and 4 “development-specific” variances), pursuant to N.J.S.A. 40:55D-70(c).

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

7. Frederick B. Zelly, Esq., of Bisogno, Loeffler & Zelly, LLC, entered his appearance on behalf of the Applicant. Mr. Zelly described the existing and proposed conditions and summarized the requested variance relief. Mr. Zelly also identified a compendium of photographs of the existing dwelling, that he had taken on October 7, 2020, and which were submitted to the Board with the application materials.

8. The Board first addressed and resolved the issue of res judicata, determining, on unanimous polling of the Board Members, that the doctrine did not preclude the Applicant from seeking the relief requested in the new application, despite the denial by the Board of a prior application by the Applicant at the Property. The Board considered that, under the doctrine of res judicata, if the same parties or their privies seek the same relief in the same factual setting, the case may be dismissed on the ground that it has already been decided. The doctrine of res judicata is one which has been evolved by the courts to prevent the same case being brought before the court time after time. “As a general rule, an adjudicative decision of an administrative agency ‘should be accorded the same finality that is accorded the judgment of a court.’” Bressman v. Gash, 131 N.J. 517, 526 (1993), quoting Restatement (Second) of Judgments, §83 comment b (1982). The Court went on to say that the application of the doctrine to administrative decisions, like its application to judicial decisions rests on policy considerations such as “finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expense; elimination of conflicts, confusion and uncertainty; and basic fairness.” Id. at 527.

9. The Board noted that, whether an application is to be rejected on the grounds of res judicata is in the first instance for the board to determine. Even if the application is closely similar to a previous one, or identical with it but it is alleged that the surrounding circumstances have changed or that experience has shown the prior denial to be error (Gruber v. Mayor and Tp. Comm. of Raritan Tp., 39 N.J. 1, 12 (1962)), it is within the discretion of the board whether to reject the application on the ground of res judicata, and the exercise of that discretion may not be overturned on appeal in the absence of a showing of unreasonableness.

10. The Board recognized that, in the Cox Treatise, the author references the following: *Examples of situations in which res judicata is applicable.* If an applicant files an application seeking to erect a building within five feet of a property line, and the variance is denied, neither the applicant nor a succeeding owner may file an application seeking exactly the same kind of relief. On the other hand, if the second application seeks to erect a building ten feet from the property line, then the same relief is not being sought and the matter would not be res judicata.

11. The Board also considered that, where a second application seeks relief which is entirely different and of lesser proportions than the first application, then res judicata may not be applicable. For example, in Tzeses v. Bd. of Trustees of South Orange, 22 N.J. Super. 45, 54-55 (App. Div. 1952), certif. den. 11 N.J. 327 (1953), the first application sought a variance to permit construction of three houses whereas the second application sought a variance to permit construction of only two houses and an entirely different arrangement of the property. The court there held that the second application was not barred by the denial of the earlier application.

12. Here, the Applicant's prior proposal to construct a new dwelling on the subject property was denied by the Board as set forth in a resolution adopted on April 7, 2021 (case no.

ZB20-015). The Board recognized that the Applicant's current proposal includes the following changes compared to the prior proposal:

- a. The floor area of the proposed dwelling, including first, second and attic floors, has been reduced by 506sf, from 3,628sf to 3,122sf.
- b. The footprint of the proposed dwelling, including porch area, has been reduced by 765sf, from 2,090sf to 1,325sf. Most of this reduction was accomplished by relocating the proposed two-car garage from the first floor level to the basement level.
- c. The total proposed lot coverage has been reduced by 582sf, from 32.5% (2,738sf) to 25.6% (2,156sf), and the proposed net increase in lot coverage has been reduced from 1,112sf to 530sf. Since the increase in coverage is now below 1,000sf, stormwater infiltration measures are no longer required by ordinance, and drywells are no longer proposed.
- d. The proposed dwelling has been redesigned such that the primary front façade, which previously faced East Allen Street, now faces North Maple Avenue, and the rear deck, which previously faced the church/cemetery property to the south, now faces the adjoining residence to the west. As a result, the southerly yard, which was previously a rear yard, is now a side yard, and the westerly yard, which was previously a side yard, is now a rear yard. This change in yard designations lessens the intensity of the improvable lot area variance (the proposed improvable lot area changed from 0sf to ±440sf) and the southerly setback variance (the proposal changed from a 14.1' rear yard where 40' was required, to a 15.5' side yard where 20' is required).

13. Based upon the aforesaid, the Board concluded that the Applicant was not barred by the doctrine of res judicata from proceeding with this new and different development application that sought relief of lesser proportions than that sought in the prior application.

14. Douglas B. Battersby, R.A., having an address of 4 Ramapo Valley Road, P.O. Box 370, Oakland, 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. Battersby described the condition of the existing dwelling and stated that, judging by the materials used and the style of the dwelling, it was probably built in the late 1880's. He opined that, due to the deteriorated condition of the structure, restoring the dwelling, rather than demolishing it, is not feasible.

15. Mr. Battersby explained that the stone piers supporting the porch are not salvageable, because there are a number of missing stones and cracks, and the foundation is only 6 to 8 inches thick and would need to be reinforced with a concrete wall. He further explained that a portion of the northwest corner of the foundation has lime in it, which makes the foundation soft and unsuitable for construction. Mr. Battersby testified that the basement is only 6'6" and current code requires a height of 7 feet. He further testified that the first floor has joists without ledger beams and that utilizing same would require the Applicant to add additional structural supports. Mr. Battersby explained that the stairs will also have to be rebuilt because they do not provide the proper head clearance and the windows lack window headers and would have to be reframed. He reminded the Board that the first floor has water damage and rot. Mr. Battersby testified that the second floor has significant sagging and the Applicant would have to reinforce all of the joists to accommodate additional weight. He further testified that the attic has leaks and water damage.

16. Mr. Battersby testified that the new dwelling would be energy efficient and provide a floor plan with amenities that would appeal to prospective buyers. He opined that, by using a classic center hall colonial layout and architectural detailing, the proposed dwelling will be consistent with the historic character of the neighborhood. Mr. Battersby opined that the two-car garage will provide off-street parking in the driveway for two additional vehicles, which he opined is a better planning alternative than parking vehicles on the street as the previous owner had done. He explained that relocating the two-car garage from the first floor level to the basement level significantly reduced the footprint of the dwelling, thus reducing the lot coverage and the building coverage.

17. Referencing the Architectural plans submitted with the application, Mr. Battersby opined that the proposed dwelling will have a historic element and will be consistent with the

existing neighborhood. He explained that the proposed porch will be similar to the existing porch and, as viewed from East Allen Street, will appear to be a classic center hall colonial style dwelling. On questioning as to the prior use of the dwelling, Mr. Battersby testified that the dwelling was designated as permitting two-family occupancy according to the prior tax records, but that only one family actually resided there until recently. He described the proposed construction materials as including circular columns, architectural roof shingles, white fiber cement siding with black elements, gables with details, double hung windows with grilles, and transom windows.

18. Mr. Battersby explained that the dwelling is a similar center hall colonial to that which was proposed in the prior application, but now the home was relocated to front on North Maple Avenue rather than East Allen Street, and the two-car attached garage that previously was located to the right of the dwelling now was relocated to the basement level underneath the dwelling.

19. On questioning, the Applicant stipulated that the 16 foot wide, 2-car garage door would be a traditional garage door with frame and rail, designed substantially similar to that proposed on the architectural drawings, with the intent that it appear consistent with “turn of the century” architecture and design.

20. The Applicant introduced into evidence, as **Exhibit A-1**, 18 slides, each slide with 2 or 3 pictures of the existing dwelling, all taken in April 2021. Mr. Battersby opined that the dwelling proposed was architecturally similar to the homes at 21 and 24 North Maple Avenue.

21. William G. Hollows, P.E., P.P., P.L.S., having a business 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.

22. Mr. Hollows introduced into evidence, as **Exhibit A-2**, a colorized rendering of the Existing Conditions plan, and he explained the existing conditions on the Property, including that the existing dwelling fronts on North Maple Avenue and has no garage or driveway.

23. Mr. Hollows next introduced into evidence, as **Exhibit A-3**, a colorized rendering of the Proposed Conditions plan, and he described the proposed new dwelling and associated improvements. He also listed the requisite variances, as reflected above.

24. Mr. Hollows next introduced into evidence, as **Exhibit A-4**, a House Overlay exhibit, reflecting that the proposed dwelling is approximately the same size as the existing dwelling (shaded), is somewhat closer to Lot 2 (the church cemetery lot), but somewhat further from Lot 3 (the Grant lot), and the front of the proposed dwelling lines up with the porch of the existing dwelling.

25. Mr. Hollows addressed the memos of the Board professionals. The Applicant stipulated, as a condition of approval, to complying with the comments and recommendations set forth in the June 2, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley; the June 6, 2022 Review Memorandum prepared by the Board Engineer, Mr. Quinn; and the March 30, 2022 Review Memorandum prepared by the Township Environmental Commission.

26. The Applicant stipulated to providing a row of “four season” landscape screening, with a minimum planting height of 6 feet, along the southwesterly property line adjoining Lot 2 (the church cemetery lot), and running from 25 feet set back from the front property line (at North Maple Avenue) and terminating 25 feet set back from the rear property line (at Lot 3, the Grant Lot), the purpose of which is to screen the Property from the memorial garden located on Lot 2.

27. Marco Scarabaggio, having an address of 32 West 26th Street, Bayonne, New Jersey, was duly sworn according to law. Mr. Scarabaggio testified that he is the principal of the

Applicant, Silver Living LLC, and that the Applicant purchased the Property in 2019. Referencing Exhibit A-1, Mr. Scarabaggio testified that the existing dwelling is dilapidated and beyond repair, due to years of neglect. Referencing Exhibit A-2, Mr. Scarabaggio explained what he considered to be the significant level of deterioration of the dwelling. On questioning as to whether the Applicant could restore the dwelling, rather than demolish it, Mr. Scarabaggio contended that it could not be restored given the poor condition of the dwelling, the deflection of flooring beams and joists, deterioration of the foundation, the wood rot around the soffits, the extensive roof leaks and the evidence of termite damage. On questioning as to the condition of the exterior of the dwelling, Mr. Scarabaggio explained that the roof has a major opening that the Applicant has been trying to seal but has been unable to do so, given the deterioration of the structure due to years of neglect, as well as weatherization/oxidation. He further explained that a tree had fallen onto the dwelling and destroyed the porch.

28. On questioning, Mr. Scarabaggio confirmed that all of the photographs submitted with the application, and introduced into evidence, accurately depict the Property as it presently exists.

29. Nancy Deutsch, on behalf of the Basking Ridge Presbyterian Church Board of Trustees, 1 East Oak Street, Basking Ridge, introduced as Exhibit P-1, a letter from the Board of Trustees and she testified consistent with same. She requested, and the Applicant stipulated as a condition of approval, to buffering the southerly side-yard, which borders the Church cemetery lot 2, with appropriate, hardy, and “four-season” vegetative plantings.

30. Kathleen Grant, 17 East Allen Street (Lot 3, Block 1607), testified in support of the current application, despite having successfully opposed the prior application in 2018. She

requested, and the Applicant stipulated as a condition of approval, to buffering the westerly rear-yard, which borders her property, with appropriate, hardy, and “four-season” vegetative plantings.

31. On summation, Mr. Zelley, the Applicant’s counsel, contended that the dwelling is not inconsistent with the neighborhood or the Historic District, and the dwelling will be consistent with the architectural style of the prior dwelling. Mr. Zelley further contended that the proposed dwelling constitutes a better planning alternative than the existing dwelling, which is in poor condition and is not aesthetically pleasing.

32. Mr. Zelley contended that the Applicant had demonstrated both the positive and negative criteria, under both N.J.S.A. 40:55D-70(c)(1) and (c)(2) as to the 4 “development specific” proposed deviations, and under c(1) as to the 4 “property specific” existing deviations. Mr. Zelley concluded with the contention that the proposal would not result in substantial detriment to the public good or substantial impairment of the Master Plan or the Zoning Ordinance.

DECISION

33. The Board finds, by a vote of 7 to 0, that the Applicant satisfied both the positive criteria under both N.J.S.A. 40:55D-70(c)(1) and (c)(2), and also both of the requisite two prongs of the negative criteria, as to the 4 proposed “development-specific” deviations, and the positive criteria under c(1) and both prongs of the negative criteria, as to the 4 existing “property-specific” deviations.

34. As in all variance cases, the Applicant bears the burden of proving both the positive and the negative criteria for all of the requisite variance relief. See, Ten Stry Dom Ptp. v. Mauro, 216 N.J. 16, 30 (2013); Nash v. Board of Adjustment of Morris Tp., 96 N.J. 97 (1984); Cohen v. Borough of Rumson, 396 N.J. Super. 608, 615 (App. Div. 2007); Kogene Bldg. & Dev. v. Edison Tp., 249 N.J. Super. 445, 449 (App. Div. 1991). Here, the Board finds that the Applicant has met its burden of proof as all eight (8) total bulk variances, including the four (4) that relate specifically to the proposed development of the Property, i.e., the two front-yard setback deviations, the side-yard setback deviation and the lot coverage deviation, and the four (4) existing deviations that relate to the Property itself, i.e., the lot area, the improvable lot area, and both lot width deviations.

Property-Specific Pre-Existing Nonconformities – Positive Criteria for (c)(1) Variance Relief is Satisfied:

35. As to the four (4) “property-specific” existing nonconformities, specifically the non-conforming lot area, improvable lot area, and two (2) lot width deviations, the Board finds that the Applicant has demonstrated an entitlement to subsection c(1) “undue hardship” relief, and that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. The Property is significantly undersized as to lot area, improvable lot area, and both lot width

measurements as it is a corner lot. The Board further finds that the Applicant is not required to obtain additional adjacent property to reduce the magnitude of these pre-existing non-conforming conditions, since the adjacent properties already are developed. As such, the Board finds that the Applicant has demonstrated an entitlement to the requested bulk variance relief for the pre-existing non-conforming lot area, improvable lot area, and lot widths, pursuant to N.J.S.A. 40:55D-70(c)(1).

Development-Specific Proposed Deviations – Positive Criteria for (c)(1) Variance Relief is Satisfied:

36. As to the positive criteria for “(c)(1)” or “undue hardship” variance relief for the four (4) “development-specific” proposed deviations, specifically the two (2) front-yard, and the side-yard, setback deviations and the excess lot coverage, the Board finds that the Applicant has satisfied its burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, it as the owner of the Property, as a result of an exceptional or unique condition of the Property or the dwelling lawfully constructed thereon.

37. A predicate issue for the grant of subsection (c)(1) variance relief is that the Applicant must prove that the need for the variance relief “arises out of” (a) the exceptional narrowness, shallowness or shape of the specific property, (b) unique topographic conditions or physical features uniquely affecting the specific property, or (c) an extraordinary and exceptional situation uniquely affecting a specific property or the structures existing thereon. The Board recognizes that a variance under subsection c(1) must be grounded in conditions peculiar to the particular lot, as distinguished from other properties in the zone.

38. Here, the Board finds that the Applicant has demonstrated that the hardship is grounded in conditions peculiar to the particular lot, given that the Property is a corner lot that is

significantly deficient as to lot area and lot width, thus resulting in virtually no building envelope, despite being a residential building lot.

Development Specific Proposal Deviations -- Positive Criteria for (c)(2) Variance Relief is Also Satisfied:

39. As to the “positive criteria” for the “c(2)” or “flexible c” variances for the four (4) development-specific proposed zoning deviations, the Board finds that the Applicant also has satisfied its burden of demonstrating that the purposes of the 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. The Board recognizes that the removal of the existing dwelling, which is in significant disrepair, by itself provides a benefit to the public.

40. The Board considers that, in Kaufmann v. Planning Bd. of Warren Twp., 110 N.J. 551, 560-61 (1988), the Supreme Court recognized that a subsection c(2) variance was intended to affect “a very narrow band of cases in which the standard fell somewhere between the traditional standards of hardship on the one hand, and ‘special reasons’ on the other.” Further, in Kaufmann, the Supreme Court was clear that the grant of approval of a c(2) variance must “actually benefit the community in that it represents a better zoning alternative for the property.” Id. at 563. In the case sub judice, based upon the proofs submitted by the Applicant, the Board concludes that the subject development proposal advances zoning benefits to the neighboring community. The Board also finds that the proposal advances the purposes of the MLUL.

41. In sum, the Board finds that the Applicant has demonstrated the positive criteria, pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2), for the four (4) “development specific” proposed zoning deviations, i.e., the two front-yard setback deviations, the side-yard setback deviation and the excessive lot coverage.

The Negative Criteria for “c(1)” and “c(2)” Variance Relief:

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

43. The Board recognizes that the “negative criteria” consist of two elements, both of which a variance applicant must prove; that is, that the proposed development can be accomplished (1) without substantial detriment to the public good and (2) without substantially impairing the intent and purpose of the zone plan and zoning ordinance. See, Medici v. BPR Co., 107 N.J. 1, 4 (1987). The former focuses on balancing the positive and negative aspects of a variance request against the purposes of zoning set forth in N.J.S.A. 40:55D-2, whereas the latter is more concerned with establishing the bounds of zoning board action.

44. As to the “negative criteria” for the requested variance relief for the property-specific pre-existing nonconformities, specifically the non-conforming lot area, improvable lot area, and two lot width deviations, the Board finds that the Applicant has 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. In this regard, the Board recognizes that the Property is improved with a single-family dwelling that has existed without detriment to the neighborhood and finds that the continuation of the non-conforming lot area, improvable lot area, and two lot width deviations will not result in substantial

detriment to the public good, as long as the proposed dwelling located thereon either is conforming with the Zoning regulations or, alternatively, is not so large and otherwise detrimental from a zoning and planning perspective that it cannot justify the requisite zoning relief. The Board further recognizes that granting the requested property-specific relief, under such circumstances, would not rise to the level of rezoning the Property, such that same would not substantially impair the intent of the Master Plan and Zoning Ordinances. As such, the Board finds that the Applicant can satisfy the negative criteria for the requested lot area, improvable lot area, and two lot width deviations.

45. Similarly, as to the requested variance relief for the four (4) “development-specific” proposed zoning deviations, specifically the two (2) front-yard setback deviations, the side-yard setback deviation and the excessive lot coverage, the Board also finds that the Applicant has 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.

The First Prong (Substantial Detriment) of the Negative Criteria is Satisfied:

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

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

47. Here, the Board recognizes that the Applicant had reduced the size, mass and scale of the previously proposed dwelling, and significantly reduced the lot coverage and most of the setback deviations, by, inter alia, relocating the two-car attached garage from the first floor to the basement level.

48. As such, the Board finds that the proposal will not be substantially detrimental to the public good. In sum, the Board finds that the Applicant has satisfied the requisite first prong of the negative criteria for the existing property-specific, and the proposed development-specific, zoning deviations.

The Second (Substantial Impairment) Prong of the Negative Criteria is Satisfied:

49. The Board recognizes that the focus of the “substantial impairment” prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation of the governing body and planning board authority. The Supreme Court in Medici v. BPR Co., 107 at 5, has made it clear that municipalities should make zoning decisions by ordinance rather than by variance. The Court stated that “[t]he added requirement that boards of adjustment must reconcile a proposed use variance with the provisions of the master plan and zoning ordinance will reinforce the conviction expressed in [Ward v. Scott, 11 N.J. 117 (1952)], that the negative criteria constitute an essential ‘safeguard’ to prevent the improper exercise of the variance power.” Id. at 22.

50. As to the second prong of the negative criteria, the Board finds that the Applicant has demonstrated that the relief can be granted without substantial impairment of the Master Plan and the Zoning Ordinance. Here, the Board concurs with the Applicant’s experts, and given the Master Plan goals and objectives of preserving the character of the neighborhood, encouraging historic preservation and the conservation of historic sites, the Board finds that the Applicant’s proposal does not substantially impair the Master Plan or the Zoning Ordinance. In sum, the Board

finds that the Applicant has satisfied the second prong of the negative criteria for both the property-specific pre-existing nonconformities and the development-specific proposed zoning deviations.

51. Based on the foregoing, the Board finds that the Applicant has demonstrated the positive criteria for the four (4) “development-specific” proposed zoning deviations, specifically the requested two (2) front- and one (1) side-yard setback and the lot coverage deviations, under both N.J.S.A. 40:55D-70(c)(1) and (c)(2), and the four (4) “property-specific” existing deviations, specifically the non-conforming lot area, the improvable lot area, and the two (2) lot width deviations, under Section 70(c)(1) alone. The Board finds that the Applicant has further satisfied both of the requisite two prongs of the negative criteria for all 8 of the requested zoning deviations. As such, the Board grants all of the requested bulk variance relief requested herein.

WHEREAS, the Board took action on this application at its meeting on June 8, 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 July, 2022, that the application of **SILVER LIVING, LLC**, for bulk variance relief, 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 Applicants’ escrow account;
2. The Applicant shall comply with the comments and recommendations set forth in the June 2, 2022 Review Memo prepared by the Township/Board Planner, Mr. Schley, including making the following plan revisions:
 - a. The Applicant shall revise the zoning table on the Variance Plans to show the correct existing/proposed improvable lot area.
 - b. The Variance Plans and the architectural plans shall be revised to eliminate inconsistencies between the specified ridge elevation, first floor elevation, and height of the proposed dwelling.

- c. The building height calculation on the Variance Plans shall be amended to identify the “existing grade.” If the proposed finished grade (250.65) is more than three feet above the existing grade, then the building height calculation must be revised to reflect that the building height is measured from a reference plane representing a level three feet above the existing grade, all in accordance with the definition of “Height of Structure.”
- d. Prior to issuance of a construction permit, the architectural/construction drawings shall be subject to further review and approval by the Township Zoning Officer, including review of the attic space to ensure it is classified as a half (not full) story.
- e. The plans show several existing trees to be removed, most of which are within or near an existing sight easement at the street intersection. Special care shall be taken when removing the 24” diameter tree in the southeasterly corner of the property, which is very close to an existing stone wall on the adjoining church/cemetery property. A tree protection, removal, and replacement plan shall be submitted for review and approval by the Township Engineering Department prior to any land disturbance.
- f. The proposed front porch shall remain open, i.e., covered with a roof but not enclosed on the front and sides except for columns and open railings, and the rear deck shall remain an “open deck,” as shown on the architectural plans. The deck is a permitted exemption within the 40’ rear-yard setback area, and it must remain open to remain exempt.
- g. The Applicant shall make the site available to the Basking Ridge Fire Company in the event they wish to run drills on the site, with notice given to the Fire Company at least 30 days prior to the demolition date of the existing dwelling (unless the dwelling is deemed unsafe for drill purposes).
- h. An engineering permit shall be obtained prior to any work within the North Maple Avenue or East Allen Street rights-of-way. The removal/replacement of existing walkway and steps in the rights-of-way must be to the satisfaction of the Township Engineering Department.
- i. All utilities serving the proposed dwelling shall be located underground and routed to minimize disturbance to existing trees. The note stating “pole to be relocated as required,” which appears on sheet 2 of the Variance Plans, shall be deleted.
- j. A completed Township standard lot coverage disclosure form shall be submitted prior to the issuance of a construction permit.
- k. A development fee shall be paid in accordance with §21-86.

3. The Applicant shall comply with the comments and recommendations set forth in the June 6, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn, including making the following plan revisions:
 - a. The Applicant shall obtain topography along the edge of pavement along East Allen Street where the proposed driveway apron is to meet in order to confirm the slope and drainage of the proposed driveway.
 - b. The grading plan is very cursory, depicting only 2 foot contours and very few spot grades. In addition there appears to be some sort of retaining structure depicted in the northerly portion of dwelling associated with some steps. Additional spot grades shall be shown for this structure to determine its height and the need for any retaining wall calculations that may be required for - submittal to the township building department as part of the building permit process, which may include the design of fall protection.
 - c. The grading along the westerly corner of the building shall clearly show the drainage grading required along the dwelling in order to comport with building code.
 - d. It appears that the limit of disturbance will exceed 5,000 SF requiring certification by the Soil Conservation District. The limit of disturbance shall be placed on the plan, along with SESC measures as required.
4. The Applicant shall provide a row of “four season” landscape screening, with a minimum planting height of 6 feet, along the southwesterly property line adjoining Lot 1 (the church cemetery lot), and running from 25 feet set back from the front property line (at North Maple Avenue) and terminating 25 feet set back from the rear property line (at Lot 3, the Grant Lot), the purpose of which is to screen the Property from the memorial garden located on Lot 1;
5. The Applicant shall provide a row of “four season” landscape screening, with a minimum planting height of 6 feet, along the northwesterly property line adjoining Lot 3 (the Grant Lot), and running from the side property line (at Lot 1, the church cemetery lot) and terminating at the row of five cedar trees shown on the Variance Plans, the purpose of which is to screen the Property from the Grant Lot;
6. Exterior construction materials for the proposed dwelling shall include architectural roof shingles, fiber cement siding, and a stone veneer foundation. The 16 foot wide, 2-car garage door shall be a traditional garage door with frame and rail. The exterior of the dwelling shall be designed substantially similar to that proposed on the architectural drawings, with the intent that it appear consistent with “turn of the century” architecture and design.
7. The Applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity;

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: Bauman, Genirs, 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 July 6, 2022.

Cyndi Kiefer

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

Dated: July 6, 2022



Resolution of the Township of Bernards Zoning Board of Adjustment

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

Resolution #22-06

Professional Services Contract for 2022 Board of Adjustment Attorney

Awarded to Steven K. Warner, Esq. of the firm Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher PA

In the Not to Exceed Amount of \$ 20,000.00, including matters of litigation.
(Excluding Matters funded by Escrow)

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

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

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

WHEREAS, Bernards Township Zoning Board of Adjustment has special confidence in Steven K. Warner, Esq., of the firm Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher PA by reason of the special knowledge and experience demonstrated by the firm and further by reason of the scope of services and schedule of compensation proposed by the firm; and

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

NOW BE IT RESOLVED by the Township of Bernards Zoning Board of Adjustment that a professional service contract be awarded to Steven K. Warner, Esq., of the firm Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher PA as follows:

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

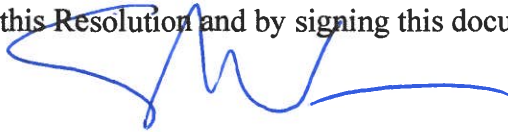
6. As required by law, the parties to this contract agree to incorporate into this contract the mandatory affirmative action language promulgated by the Treasurer pursuant to PL 1975, c127, which is attached to this resolution as Exhibit A.

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

NOW THEREFORE BE IT FURTHER RESOLVED, that the Chairman is authorized to execute a contract for the services of Steven K. Warner, Esq., of the firm Savo, Schalk, Corsini, Warner, Gillespie, O'Grodnick & Fisher PA, which contract [*appended to this resolution*] shall be available for inspection at the Bernards Township Zoning Board of Adjustment Offices during regular business hours.

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

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



Steven K. Warner, Esq.

CFO CERTIFICATION

I, Sean McCarthy, Chief Financial Officer of the Township of Bernards, hereby certify that adequate funds are available for this contract. The line item appropriations to be charged are Board of Adjustment Other Expenses, for Professional Legal Services, account Fees and Compensation #2-01-21-185-204 in the not to exceed amount of \$2,500.00 and the line item appropriation to be charged for Litigation Services is account #2-02-21-185-20A in the not to exceed amount of \$17,500.00.



Sean McCarthy, Chief Financial Officer

Date: June 28, 2022

PURCHASING CERTIFICATION

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



Francis J. Decibus, QPA
Purchasing Agent

Date: June 23, 2022

Dated:

ATTEST:



Cyndi Kiefer, Board Secretary

ADOPTED:



Jeanmarie Genirs, Chairwoman