

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

**MINUTES** v2  
Regular Meeting  
August 3, 2022

## **CALL TO ORDER**

Vice Chairman Tancredi called the meeting to order at 7:32 PM.

## **FLAG SALUTE**

## **OPEN PUBLIC MEETINGS STATEMENT** – Chairman Tancredi 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, Cambria, Kraus, Pavlosky, Pochtar, Tancredi  
Members Absent: Genirs, Helverson  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

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

## **APPROVAL OF MINUTES**

June 16, 2022 – Special Session – On motion by Ms. Baumann, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as amended.

July 6, 2022 – Regular Session – On motion by Ms. Baumann, seconded by Mr. Amin, all eligible in favor and carried, the minutes were adopted as amended.

## **APPROVAL OF RESOLUTIONS**

Kochek, Peter & Carrie; Block 1802, Lot 22; 143 South Finley Avenue; ZB22-006 (approved) - Ms. Baumann moved to approve the resolution as drafted. Mr. Amin seconded.

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

Motion carried.

Patel, Dhaval & Nipuben; Block 4701, Lot 2.07; 17 River Farm Lane; ZB22-010 (approved) - Ms. Pochtar moved to approve the resolution as amended. Mr. Amin seconded.

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

Motion carried.

Leis, Matthew/Klanchnik, Colleen; Block 1614, Lot 12; 97 Juniper Way; ZB22-012 (approved) - Mr. Amin moved to approve the resolution as drafted. Ms. Pochtar seconded.

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

Ineligible: Cambria, Kraus, Pavlosky  
Motion carried.

[Pruss, Christopher & Lisa](#); Block 5504, Lot 9; 85 Spring House Lane; ZB22-009 (approved) - Mr. Amin moved to approve the resolution as drafted. Ms. Baumann seconded.

Roll call: Aye: Amin, Baumann, Tancredi  
Nay: NONE  
Ineligible: Cambria, Kraus, Pavlosky, Pochtar  
Motion carried.

[Gilbert, Michael & Catherine](#); Block 6301, Lot 34.03; 18 Belmont Court; ZB22-008 (approved) - Ms. Baumann moved to approve the resolution as drafted. Mr. Amin seconded.

Roll call: Aye: Amin, Baumann, Pochtar, Tancredi  
Nay: NONE  
Ineligible: Cambria, Kraus, Pavlosky  
Motion carried.

### **COMPLETENESS HEARING**

[New Jersey American Water Co. Inc.](#); Block 1609, Lot 25; East Oak Street (rear); Preliminary/Final Site Plan, Variances; ZB22-014

Mr. Schley advised the Board that all applicable items not previously waived by the Board had been submitted.

On motion by Ms. Pochtar, seconded by Mr. Kraus, all eligible and in favor, the application was deemed complete with the waivers previously granted. A hearing date of 09/07/2022 was set.

### **HEARING** – Modification of Condition of Approval

[J. Nan Realty Company, LLC](#); Block 3603 Lot 1; 18 Columbia Road; Preliminary/Final Site Plan; Extension of Time to Obtain Construction Permits, Commence and Complete Construction, Obtain Certificates of Occupancy; ZB18-011C

Present: Frederick B. Zelle, Esq., Attorney for the Applicant  
John W. Utz, jr., Managing Member, Applicant

Mr. Warner stated that the Board had jurisdiction to hear this application. Mr. Utz, Mr. Quinn and Mr. Schley were duly sworn.

Frederick B. Zelle, Esq., attorney with a business address of 53 Division Avenue, Millington, NJ, entered his appearance on behalf of the Applicant and requested a modification to Condition 35B of the 2018 Preliminary and Final Site Plan approval to extend the deadline for obtaining construction permits, commencing and completing construction and obtaining certificates of occupancy. Noting that the deadline for obtaining construction permits had expired on 11/07/2020, Mr. Zelle stated that because of the Covid pandemic, the Applicant sought a three-year extension to 11/07/2023. The Applicant also sought an extension of the protection period for final site plan and variance approval to 11/07/2023. Finally, the Applicant sought an extension of the deadline to break ground and obtain permanent certificates of occupancy from one (1) to two (2) years after issuance of construction permits. Mr. Schley stated that there had been no change in the zoning ordinances or the area since the 2018 approval that would constitute a change in circumstances.

The hearing was opened for public questions or comments. Hearing none, that portion of the hearing was closed.

Ms. Pochtar moved to grant the Applicant's request for a modification of a condition of approval, specifically Condition 35B of the 2018 Preliminary and Final Site Plan approval. Mr. Cambria seconded.

Roll call: Aye: Amin, Baumann, Cambria, Kraus, Pavlosky, Pochtar, Tancredi  
Nay: NONE  
Motion carried.

### **HEARING** – Modification of Condition of Approval

[Blauvelt, Richard S.](#); Block 1603, Lot 21.01; 20 Lewis Street; Allow Separate Uses in an Existing Building; ZB07-012A

Present: Frederick B. Zelle, Esq., Attorney for the Applicant  
Richard S. Blauvelt, Applicant

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

Frederick B. Zelle, Esq., attorney with a business address of 53 Division Avenue, Millington, NJ, entered his appearance on behalf of the Applicant and requested a modification of Condition C (Resolution ZB07-012 dated 09/05/2007) to allow the Applicant and future owners to use the subject building for any use(s) permitted in the B-3 zone, except a use or combined uses which would increase the parking requirement beyond 13 spaces. He explained that currently, the second-floor offices can be used only in conjunction with the operation of the first-floor business, adding that similar properties in the area house multiple uses including residential and business.

Richard S. Blauvelt, Applicant, testified that in 2007, he received approval from this Board to convert the dwelling on the subject property into a florist shop and offices. He stated that the condition of approval which restricted the use of the building to only one (1) business, had negatively impacted his ability to sell the property. Noting that his current florist business does not use the second floor and occupies only a portion of the first floor, Mr. Blauvelt opined that the building is too big to house just one (1) business. Finally, he stipulated, as a condition of approval, that no more than three (3) uses could occupy the building and that those combined uses could not increase the parking requirement beyond 13 spaces.

The comments made in memos from Mr. Schley (08/01/2022) and Mr. Quinn (08/02/2022) were addressed to the satisfaction of the Board. The Environmental Commission and Somerset County Planning Board had no comments.

The hearing was opened for public questions or comments. Hearing none, that portion of the hearing was closed.

Ms. Pochtar moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant a modification of condition specifically Condition C (Resolution ZB07-012 dated 09/05/2007), subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Cambria seconded.

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

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Jordano Living Trust; Block 8802, Lot 25; 37 St. Nickolas Way; Bulk Variance; ZB22-011

Present: Frederick B. Zelle, Esq., Attorney for the Applicant  
John T. Jordano, Trustee

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

Frederick B. Zelle, Esq., attorney with a business address of 53 Division Avenue, Millington, NJ, entered his appearance on behalf of the Applicant and listed the proposed improvements to the rear yard: (1) replace an existing screened porch with a larger one, (2) replace an existing deck with a larger one which includes a firepit, (3) add a shed, (4) install a pool code compliant fence to enclose the rear yard, (5) replace an existing retaining wall and (6) remove/replace/add various walkways. Noting that the only relief required was for exceeding the maximum impervious lot coverage allowed, Mr. Zelle stated that the existing (unapproved) lot coverage already exceeded the maximum. To help mitigate the overage, the Applicant proposed to remove some existing coverage resulting in a net increase of approximately 142 square feet. Finally, Mr. Zelle affirmed that he had taken the pictures submitted with the application and that they accurately depict the property as it currently exists.

John T. Jordan, Trustee of Jordano Living Trust, residing at 37 St. Nickolas Way, testified that he and his wife had built the existing dwelling, pool, pool patio and walkways and that a Certificate of Occupancy was issued with no mention about an overage in lot coverage. He confirmed that trees were removed when the new fence was recently installed and that more might have to be removed. He added that vegetation will be added along the property

line to improve buffering and stipulated that the final landscape plans shall be subject to review by Mr. Schley. Finally, Mr. Jordano testified that he had not received any negative comments about the project from neighbors.

The comments made in memos from Mr. Schley (08/01/2022), Mr. Quinn (08/02/2022) and the Environmental Commission (07/26/2022) were addressed to the satisfaction of the Board.

The hearing was opened for public 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" 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 approve the application, subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Cambria seconded.

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

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Monk, Trevor & Caren; Block 8602, Lot 82; 489 King George Road; Bulk Variance; ZB22-013

Present:	Jonathan E. Booth, RA, Architect for the Applicants
	Trevor Monk, Applicant

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

Trevor Monk, Applicant residing at 489 King George Road, testified that the proposed project, removal of a portion of the existing dwelling, construction of an addition and replacement of an existing deck, required relief for encroachment into the front yard setback. He stated that he has been restoring the existing dwelling however, the portion proposed to be demolished could not be renovated due to its deteriorating condition. Finally, he confirmed that there were no negative comments from neighbors.

Jonathan E. Booth, RA, architect with a business address of 33 Bullion Road, Basking Ridge, NJ, was accepted by the Board as an expert in the field of architecture. He testified that the portion of the existing dwelling that will remain, encroaches farther into the front yard setback than the proposed addition and added that the footprint of the proposed addition/house largely coincides with the footprint of the existing house. Finally, Mr. Booth stated that since the property was already nonconforming (legally) with respect to total impervious lot coverage, a portion of the driveway will be removed to create a small net *decrease* in the amount of coverage.

**Exhibit A-1**, a colorized version of Sheet 2 of plans dated 05/11/2022, prepared by Mr. Booth and submitted with the application, was entered into evidence. Using the exhibit, Mr. Booth described the floorplans of the addition. He agreed to show on the plans which trees/shrubs would be removed and where additional vegetation would be planted. Finally, he testified that he had taken the pictures submitted with the application and that they accurately depicted the property as it currently exists.

The comments made in memos from Mr. Schley (08/01/2022), Mr. Quinn (08/02/2022) and the Environmental Commission (07/26/2022) were addressed to the satisfaction of the Board.

The hearing was opened to the public for questions or comments. Responding to Richard Di Lorenzo, residing at 495 King George Road, Mr. Quinn opined that since there would be no major shift in the drainage pattern, there would be no increase in the amount of runoff to Mr. Di Lorenzo's property. The Applicant agreed to supply a topographical survey to confirm this. Hearing nothing further, 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" 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 relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Cambria seconded.

Roll call: Aye: Amin, Baumann, Cambria, Kraus, Pavlosky, Pochtar, Tancredi  
Nay: NONE  
Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

Kotel, Ira L. & Amy G.; Block 4301, Lot 11; 18 Colts Glen Lane; Bulk Variance; ZB22-015

Present: Ira & Amy Kotel, Applicants

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

Ira Kotel, Applicant residing at 18 Colts Glen Lane, testified that the proposed project, construction of an inground swimming pool and associated amenities, required relief for the pool location which is not behind the rear building line of adjacent dwellings. He stated that because of the orientation of his house and those on the adjacent properties, there is no conforming location. The wetlands, which occupy the majority of his property, and the septic field location created further hardships in finding a logical site for the pool. He added that the existing buffering would be enhanced and a pool code compliant fence would be installed. Finally, Mr. Kotel stipulated that there would be no tree removal.

Amy Kotel, Applicant also residing at 18 Colts Glen Lane, stated that the pictures submitted with the application had been taken by a realtor in 2020 and that they accurately depict the property as it currently exists.

Mr. Quinn stated that he had conferred with John Peel, PP the Applicants' environmental consultant concerning the potential increase in the width of the existing wetlands buffer because that area is a potential habitat for an endangered species (Indiana bat). An on-site investigation as to whether that species is present would have to be conducted. Mr. Quinn added that even if the buffer were to be increased, the Applicants would be eligible to obtain permits from the New Jersey Department of Environmental Protection for the project.

The comments made the memos from Mr. Schley (08/01/2022), Mr. Quinn (08/02/2022) and the Environmental Commission (07/26/2022) 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. Responding to Mary Ruzinko, residing at 17 Colts Glen Lane, the Applicants agreed that screening would be provided as necessary to obstruct views of the pool from Colts Glen Lane and Mrs. Ruzinko's dwelling, which is located across the street. Hearing nothing further, that portion of the hearing was closed.

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

Roll call: Aye: Amin, Baumann, Cambria, Kraus, Pavlosky, Pochtar, Tancredi  
Nay: NONE  
Motion carried.

**COMMENTS FROM MEMBERS OR STAFF** - None**ADJOURN**

Moved by Ms. Pochtar, seconded by Mr. Amin, all in favor and carried, the meeting was adjourned at 10:07 PM.

Respectfully submitted,

*Cyndi Kiefer*

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 09/07/2022*

08/11/2022 dssw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**PETER and CARRIE KOCHKEK  
Case No. ZB22-006**

**RESOLUTION**

WHEREAS, **PETER and CARRIE KOCHKEK** (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 1) the removal of an existing 402 sq. ft. one-story, two-car detached garage and construction of a new 763 sq. ft. 1½-story, two-car detached garage, in the rear yard of the existing dwelling; and 2) a new bluestone terrace (252 sq. ft.) and walkway (32 sq. ft.) adjacent to the new garage, to be located on property identified as Block 1802, Lot 22 on the Tax Map, more commonly known as 143 South Finley Avenue (the “Property”):

1. A variance for a proposed lot coverage of 26.95%<sup>1</sup>, whereas the existing lot coverage is 23.04%, and the maximum permitted lot coverage in the R-7 (1/2 acre) Residential Zone is 20%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
2. A variance for a proposed detached garage having a side-yard setback of 5 feet, whereas the minimum required accessory side-yard setback in the R-7 (1/2 acre) Residential Zone is 10 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 6, 2022, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. Board Member Pochtar recused herself from hearing the application.

---

<sup>1</sup> The Applicants amended their initial application to request a proposed lot coverage of 27.06% to afford sufficient additional lot coverage for an emergency generator/pad.

2. The Board reviewed the application and deemed it to be complete.
3. The Property is an undersized and narrow lot with frontage on South Finley Avenue, located in the R-7 (1/2 acre) Residential Zone. It is presently improved with a two-story frame dwelling, wood deck, asphalt driveway and walkways.
4. The Applicants propose to remove an existing 402 sq. ft. one-story, two-car detached garage and construct a new 763 sq. ft. 1½-story, two-car detached garage, in the rear yard of the existing dwelling; and add a new bluestone terrace (252 sq. ft.) and walkway (32 sq. ft.) adjacent to the new garage. The requested variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).
5. The Applicants' proposal is depicted on architectural plans prepared by Jonathon E. Booth, R.A., dated March 24, 2022, unrevised, same consisting of three (3) sheets. The Applicants also submitted a Survey prepared by Marc J. Cifone, P.L.S., dated February 4, 2002, unrevised, same consisting of one (1) sheet.
6. David Schley, PP, AICP, the Board Planner, was duly sworn according to law.
7. Peter and Carrie Kochek, the Applicants, having an address of 143 South Finley Avenue, were duly sworn according to law. They described the existing two-car detached garage as being built in the 1950s or earlier, structurally unsound and barely large enough to fit one car. They proposed a new larger detached garage, large enough to fit two cars and afford storage behind (in lieu of a shed) and storage above (in lieu of an attic), located further to the southerly side yard behind their dwelling so that they can enjoy their rear yard.
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 Property, which is an undersized, very narrow lot, located in the R-7 Zone along an “iconic streetscape” in the historic village of Basking Ridge.

9. Mr. Booth introduced, as **Exhibit A-1**, a colorized version of Sheet S-2, last revised 3/24/22. He described the existing 400 sq. ft. garage as being building in the 1930s or 1940s, non-functional and obstructing the homeowners’ viewscape of the rear of their Property. He opined that the 5-foot garage side-yard setback would be sufficient, contending that on such narrow, older lots residents often use a 10-foot plus side-yard setback as a parking space adjacent to the detached garage.

10. Mr. Booth explained that the layout permits sufficient turnaround area so that the residents do not have to back out onto South Finley Avenue. He described the 9’4” x 16’8” rear bumpout of the detached garage as effectively serving as a shed, albeit connected to the garage. He opined that the structure will not be visible from the streetscape.

11. The Applicants stipulated to all exterior lighting being downward directed to prevent light spillage and the exterior of the garage structure being substantially similar in color, material and architectural style to the exterior of the dwelling.

12. Mrs. Kocek testified that the terrace area is critical as it provides a viewshed and gateway to the rear yard, which she estimated constitutes 40% of the Property. She also testified that she spoke with her neighbors and no one expressed any objection to the proposal.

13. Mr. Booth testified that the applicable neighborhood was the 4 or 5 dwellings on this side of South Finley Avenue adjacent to the B-1 Business Village Zone, and he opined that these lots could constitute a subzone or transitional zone for bulk requirement purposes, noting that the B-1 Zone permits a maximum lot coverage of 75% rather than just 20%.



14. The Applicants stipulated, as a condition of approval, to complying with the comments and recommendations set forth in the July 1, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and the June 21, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn.

15. No member of the public commented on the Applicants' proposal.

### **DECISION**

16. After reviewing the evidence submitted, the Board, by a vote of 4 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 and side-yard setback deficiency associated with an accessory structure (the detached garage), pursuant to both of the alternative bases set forth in N.J.S.A. 40:55D-70(c)(1) and (c)(2).

17. As to the positive criteria for the subsection "c(1)" or "undue hardship" variance relief for the requested setback deviation, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants. The Board finds that the exceptionally unique physical features affecting the Property include the narrowness and undersized nature of the Property, and the lawful pre-existing location of the subject dwelling.

18. Given the narrowness of the pre-existing undersized lot and the location of the existing mid-19<sup>th</sup> century dwelling, the Applicants are constrained to locate their garage to the rear of the dwelling, requiring a longer driveway and more lot coverage than would be necessary if the garage was closer to the street. The proposed turnaround area, provided so vehicles do not have to back out onto South Finley Avenue, consumes even more of the allowable coverage.

19. The Applicants' pre-existing nonconforming lot coverage of 4,015 sq. ft. (23.04%) exceeds the maximum permitted coverage of 3,485 sq. ft. (20%) by 530 sq. ft. (3.04%). The current proposal results in a net increase in coverage of 701 sq. ft. (4.02%), and the total proposed coverage of 4,716 sq. ft. (27.06%) exceeds the maximum permitted coverage by 1,231 sq. ft. (7.06%).

20. The Applicants' 17,428 sq. ft. Lot is undersized for the R-7 Zone. For comparison purposes, the Applicants' lot coverage would be 21.65% if all of the improvements were located on a conforming 21,780 sq. ft. lot.

21. As to the positive criteria for the subsection "c(2)" or "flexible c" variance relief for both the excessive lot coverage and the non-conforming side-yard garage 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 garage will allow the Applicants to accommodate their family and more efficiently utilize their Property. As to the side-yard garage setback deviation, the Board finds that locating the garage in a conforming location would result in the garage being more visibly intrusive to the homeowners. As such, the non-conforming location of the garage 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).

22. 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.

23. 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 from South Finley Avenue by the existing dwelling 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 no neighbors objected to the Applicants’ proposal, further evidencing the lack of substantial detriment to the neighborhood.

24. 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 a detached garage is a permitted accessory structure and the requested deviations are relatively modest in nature and certainly do not rise to the level of constituting a rezoning of the Property.

25. 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).

26. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested lot coverage and side-yard garage setback variance relief under, both subsections (c)(1) and (c)(2).

WHEREAS, the Board took action on this application at its meeting on July 6, 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 3rd day of August, 2022, that the application of **PETER and CARRIE KOCHKEK**, 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 plan shall be revised to provide topography within the development limits and to identify the drainage patterns, limit of disturbance, and soil erosion and sediment control measures in accordance with Section 21-42.11 of the Ordinance, all of which shall be subject to review and approval by the Township Engineering Department prior to issuance of a construction permit;
- (4) The Applicants shall provide a signed sealed copy of the Lakeland survey that is copied on the plan;
- (5) All exterior lighting shall be downward directed and/or shielded to prevent light spillage beyond the property lines;
- (6) The exterior of the garage structure shall be substantially similar in color, material and architectural style to the exterior of the dwelling;
- (7) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (8) The 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
- (9) 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 variances has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Amin, Baumann, Tancredi

Those Opposed: NONE

Ineligible: Cambria, Kraus, Pavlosky, Pochtar

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 August 3, 2022.

*Cyndi Kiefer*

---

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

Dated: August 3, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**DHAVAL and NIPUBEN PATEL  
Case No. ZB22-010**

**RESOLUTION**

WHEREAS, **DHAVAL and NIPUBEN PATEL** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of a 15’-10” x by 40’ (633 square foot) inground swimming pool with a spa, and a 20’ x 20’ (400 square foot) pavilion with enclosed bathroom/storage areas, an outdoor kitchen and various patio/walkway areas located to the rear of the existing dwelling, on property identified as Block 4701, Lot 2.07 on the Tax Map, more commonly known as 17 River Farm Lane (the “Property”):

A variance to locate an inground swimming pool such that it is not behind the rear building lines of adjacent dwellings, 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 July 6, 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 lot located in the R-1 (3 acre) Residential Zone with frontage on River Farm Lane. The Property is presently improved with a one and one-half-story, single-family residential dwelling and associated improvements.

3. The Applicants propose the construction of a 15'-10" x by 40' (633 square foot) inground swimming pool with a spa, and a 20' x 20' (400 square foot) pavilion with enclosed bathroom/storage areas, an outdoor kitchen and various patio/walkway areas located to the rear of the existing dwelling.

4. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Land Development Ordinance, which states "the pool shall be located behind the rear building line of existing residential structures on adjoining lots." The proposed pool is not to the rear of the dwellings on adjoining Lot 2.05 (13 River Farm Lane) to the southwest or Lot 2.06 (15 River Farm Lane) to the southeast.

5. The Applicants' property is one of twelve River Farm Lane residences comprising a natural resource conservation development approved by the Planning Board in 2008. This form of development is permitted only in the R-1 Zone and is intended to "promote the protection of viewsheds and scenic corridors by encouraging new single family dwelling units to be built in a manner that preserves a rural, agrarian character, especially as viewed from public roadways; to foster methods of land and resource management that will protect and even improve surface and groundwater quality; and to provide opportunities for the common use of agricultural facilities" (§21-10.14.1.a). The lot dimension and building setback requirements within a natural resource conservation development are designed to encourage the placement of buildings in a manner consistent with a rural agrarian setting, encouraging dwellings grouped in small clusters accessed from shared driveways and resulting in greater setbacks from public streets and large, contiguous expanses of open space reserved for conservation, agricultural, recreational or viewshed management purposes. The Applicants' dwelling and the dwellings on Lots 2.05 and 2.06 are clustered around a single shared driveway, such that the fronts of the three dwellings are oriented

toward one another. Given this layout, which is similar to what typically occurs on the bulb of a cul-de-sac, it is not possible for the Applicants to comply with the pool location requirement as it relates to either Lot 2.05 or Lot 2.06.

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

7. The Applicants' proposal is depicted on a site plan prepared by Gregg A. Spadaro, L.L.A., dated November 19, 2021, same consisting of two (2) sheets. The Applicants also submitted a Survey prepared by Philip A. McEntee, Jr., P.L.S., dated January 20, 2021, unrevised, same consisting of one (1) sheet; a breakdown of the existing and proposed impervious coverage, unrevised; and a compendium of photographs of the Property and the existing dwellings in the surrounding neighborhood.

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

9. Dhaval Patel, one of the Applicants, having an address of 17 River Farm Lane, was duly sworn according to law. Mr. Patel explained that the project requires variance relief for the location of the pool (not behind the rear building line of adjacent dwellings).

10. Mr. Patel addressed the comments set forth in the July 1, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and stipulated, as a condition of approval, to complying with same. Specifically, as to Comment 3, he testified that his dwelling will completely obscure views of the pool from the dwelling on Lot 2.05 to the southwest, and it will also partially obscure the views of the pool from the dwelling on Lot 2.06 to the southeast such that, together with existing landscape screening and the existing and proposed fencing, such view from Lot 2.06 will be almost completely obscured. He also testified that the view from Lot 2.08 is almost completely obscured by an existing dense evergreen tree line. As to Comment 5, Mr. Patel confirmed that the pavilion will be less than 20 feet tall.



11. Mr. Patel also addressed the comments set forth in the June 21, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn, and further stipulated to complying with same. He also stipulated to pool compliant fencing, explained that the proposed fiberglass pool does not require pool water discharge, and he took the photographs submitted with the application materials two months ago and they accurately depict the existing dwelling and Property.

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

### **DECISION**

13. 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 variance relief as to the proposed pool location under N.J.S.A. 40:55D-70(c)(1).

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

14. As to the positive criteria for the "c(1)" or "hardship" variance relief for the requested pool location deviation, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants. The Board finds that the exceptionally unique physical features affecting the Property include the location and orientation of the subject dwelling and the adjacent dwellings in this unique "natural resource conservation development" approved by the Planning Board in 2008.

15. The Applicants' property is one of twelve River Farm Lane residences comprising a natural resource conservation development approved by the Planning Board in 2008. This form of development is permitted only in the R-1 Zone and is intended to "promote the protection of viewsheds and scenic corridors by encouraging new single family dwelling units to be built in a

manner that preserves a rural, agrarian character, especially as viewed from public roadways; to foster methods of land and resource management that will protect and even improve surface and groundwater quality; and to provide opportunities for the common use of agricultural facilities” (§21-10.14.1.a). The lot dimension and building setback requirements within a natural resource conservation development are designed to encourage the placement of buildings in a manner consistent with a rural agrarian setting, encouraging dwellings grouped in small clusters accessed from shared driveways and resulting in greater setbacks from public streets and large, contiguous expanses of open space reserved for conservation, agricultural, recreational or viewshed management purposes. The Applicants’ dwelling and the dwellings on Lots 2.05 and 2.06 are clustered around a single shared driveway, such that the fronts of the three dwellings are oriented toward one another. Given this layout, which is similar to what typically occurs on the bulb of a cul-de-sac, it is not possible for the Applicants to comply with the pool location requirement as it relates to either Lot 2.05 or Lot 2.06.

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 Negative Criteria:**

17. As to the negative criteria required for variance relief pursuant to subsection c(1), 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.

18. 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.

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 zone plan or zoning ordinances, particularly since pools are permitted accessory structures. The Board finds in this regard that the requested deviation is relatively modest in nature and certainly does not rise to the level of constituting a rezoning of the Property.

20. 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 N.J.S.A. 40:55D-70(c)(1).

WHEREAS, the Board took action on this application at its meeting on July 6, 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 3rd day of August, 2022, that the application of **DHAVAL and NIPUBEN PATEL**, 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 submitted grading plan shall be subject to further review and approval by the Township Engineer;
- (3) The Applicants shall submit details confirming that the proposed pavilion will comply with all ordinance requirements, including the maximum permitted height of 20', prior to issuance of a construction permit for the pavilion;
- (4) The proposed pool fence, which is not permitted within the natural resource conservation easement, must be shown on the plan in its entirety, prior to issuance of a construction permit for the pool;
- (5) The Applicants shall obtain the required municipal permits for new sanitary lateral connections as well as electric and water services relating to the proposed improvements;
- (6) Soil from the pool excavation shall be removed from the Site unless the Applicants submit a grading plan showing where the soil will be used on the Site, subject to the review and approval of the Township Engineer;
- (7) The Applicants shall submit a plan showing the existing and proposed landscaping and fencing which, when combined with the screening provided by the Applicants' dwelling, will obscure views of the proposed pool from the adjoining dwellings, subject to review and approval by the Township Engineering Department prior to issuance of a construction permit for the pool;
- (8) 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;
- (9) The Applicants shall obtain any/all required approvals from their homeowners association;
- (10) The Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans;
- (11) The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (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 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
- (14) 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: Amin, Baumann, Pochtar, Tancredi

Those Opposed: NONE

Ineligible: Cambria, Kraus, Pavlosky

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 August 3, 2022.

*Cyndi Kiefer*

---

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

Dated: August 3, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**MATTHEW LEIS and COLLEEN KLANCHNIK  
Case No. ZB22-012**

**RESOLUTION**

WHEREAS, **MATTHEW LEIS and COLLEEN KLANCHNIK** (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 several relatively small additions to the existing dwelling located on property identified as Block 1614, Lot 12 on the Tax Map, more commonly known as 97 Juniper Way (the “Property”):

A variance for a proposed lot coverage of 19.3%, whereas the existing lot coverage is 19.5%, 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

WHEREAS, a public hearing on notice was held on such application on July 6, 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 narrow lot with frontage on Juniper Way, 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 expand/renovate the existing dwelling, including: a) On the front of the dwelling, a one-story, 259sf covered porch replacing an existing covered stoop; b) On the north side of the dwelling, a one-story, 431sf addition containing an office, guest room,

and bathroom; c) On the south side of the dwelling, a two-story, 1,110sf addition, most of which is new second floor space constructed on top of the existing garage, and including a mudroom/laundry/pantry (133sf) and garage expansion (106sf) on the first floor, and master bedroom suite and sitting area (871sf) on the second floor; and d) Removal of an existing 117sf shed and removal of 834sf of driveway/walkway pavers. 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 a Title Survey prepared by Casey & Keller, Inc., dated 2/3/22, and Architectural Plans prepared by Thomas Baio Architect P.C., latest revision dated 4/29/22 (Sheet C-1) and 11/21/21 (Sheets A-1 to A-6).

5. David Schley, PP, AICP, the Board Planner was duly sworn according to law.

6. Matthew Leis, one of the Applicants, having an address of 97 Juniper Way, was duly sworn according to law. Mr. Leis testified that he and his family (they have 3 children: a 10-year-old and 5-year-old twins) moved to the Property in 2020, and his father-in-law lives with the family. He explained that circumstances changed recently whereby his wife now works from home and he now does so as well 3 days per week, so the Applicants are seeking to add 2 rooms as home offices, one for each of them.

7. Mr. Leis explained that the Applicants were eliminating a 117 sq. ft. shed and 834 sq. ft. driveway/walkway pavers that they use and desire to keep, but are willing to forego so that the existing 19.5% lot coverage is not further increased, but rather slightly decreased, to more than compensate for the additional lot coverage they would add by the proposed additions. He testified that he discussed the proposal with his neighbors and they had no objection.

8. Thomas Baio, AIA, having a business address of 343 Millburn Avenue, Millburn, 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. Baio introduced into evidence as **Exhibit A-1** a colorized cover sheet of the plan set, dated 4/29/22. He explained that the Applicants were disturbing 929 sq. ft. and the orange areas reflected the lot coverage that the Applicants proposed to eliminate and the blue areas constituted the newly proposed lot coverage. He explained that the removal of driveway area still left sufficient turnaround area so that the Applicants would not have to back out of their driveway.

9. On questioning, Mr. Baio recognized that 156 sq. ft. of pavers was incorrectly colored orange and on Exhibit A-1 he stipulated to submitting a corrected version of Exhibit A-1 as a condition of approval. The Applicants also stipulated that the exterior of the additions shall be substantially similar in color, materials, and architectural style to the balance of the exterior of the dwelling.

10. Mr. Baio testified that all of the properties in the neighborhood are approximately the same size, one acre, and Mr. Schley confirmed same. He also confirmed the dwelling height was conforming at 27'2".

11. The Applicants stipulated, as a condition of approval, to complying with the comments and recommendations set forth in the July 1, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and the June 21, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn.

12. No member of the public questioned any witness, or commented on, the Applicants' proposal.

### **DECISION**

13. 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 variance relief



for the proposed impervious coverage exceedance, pursuant to N.J.S.A. 40:55D-70(c)(2).

14. As to the positive criteria for the subsection “c(2)” or “flexible c” variance relief for the excessive lot coverage, 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 the proposed additions will allow the Applicants to accommodate their family and more efficiently utilize their Property, and that the front porch addition adds to the aesthetics of the dwelling from the streetscape and protects the residents and their guests from the elements. Moreover, the Board recognizes and appreciates the Applicants’ mindfulness of the ordinance requirements, exemplified by their significant reduction in existing lot coverage to more than compensate for their proposed increase to same. 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).

15. 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.

16. 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, based upon historical aerial images of the Property, the currently configured lot coverage has existed for several years – prior to the purchase of the Property by the Applicants. As such, the Board further recognizes that the current conditions have existed without creating any issue and that the Applicants’ proposal, which results in a reduction in lot coverage, will not result in a substantial detrimental impact on the existing neighborhood, 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 no member of the public objected to the Applicants’ proposal, further evidencing the lack of substantial detriment to the neighborhood.

17. 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.

18. 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).

19. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested lot coverage variance relief under subsection (c)(2).

WHEREAS, the Board took action on this application at its meeting on July 6, 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 3rd day of August, 2022, that the application of **MATTHEW LEIS** and **COLLEEN KLANCHNIK**, 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 front porch shall remain an open porch as proposed, i.e., covered with a roof but not enclosed except for columns and open railings;
- (4) The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (5) The Applicants shall submit a plan identifying the proposed limits of disturbance and the square footage of land to be disturbed. In the event the area of disturbance exceeds 2,500sf, soil erosion & sediment control measures shall be provided in accordance with §21-42.11, to the satisfaction of the Township Engineering Department. In the event the area of disturbance exceeds 5,000sf, the Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans, prior to issuance of a construction permit;
- (6) The Applicants shall submit a corrected version of the color-coded lot coverage additions and reductions plan (Exhibit A-1) clearly showing the boundaries and square footages of the impervious surfaces to be added and the impervious surfaces to be removed;
- (7) The Applicants shall ensure that the exterior of each addition is substantially similar in color, materials, and architectural style to the balance of the exterior of the dwelling;
- (8) 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;
- (9) 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
- (10) 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: Amin, Baumann, Pochtar, Tancredi

Those Opposed: NONE

Ineligible: Cambria, Kraus, Pavlosky

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 August 3, 2022.

*Cyndi Kiefer*

---

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

Dated: August 3, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**LISA and CHRIS PRUSS  
Case No. ZB22-009**

**RESOLUTION**

WHEREAS, **LISA and CHRIS PRUSS** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of a 20’ by 40’ (800 square foot) inground swimming pool in the rear yard of the existing dwelling on property identified as Block 5504, Lot 9 on the Tax Map, more commonly known as 85 Spring House Lane (the “Property”):

A variance for a proposed lot coverage of 25.18%<sup>1</sup>, whereas the existing lot coverage is 21.98%, and the maximum permitted lot coverage is 20%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on July 6, 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 conforming sized corner lot located in the RC-4 Residential Cluster Zone with frontage on both Spring House Lane and Runyon Drive. The Property is presently improved with a two-story, single-family residential dwelling, wood deck, paver patio, and asphalt driveway.

---

<sup>1</sup> The Applicants subsequently stipulated to eliminating 243 sq. ft. of lot coverage to amend their request to a proposed lot coverage of 24.35%.

3. The Applicants propose to construct a 20' by 40' (800 square foot) inground swimming pool in the rear yard of the existing dwelling.

4. The excess lot coverage variance is governed by the criteria of N.J.S.A. 40:55D-70(c).

5. The Applicants' proposal is depicted on a Survey prepared by Statewide Surveying & Land Development, LLC dated 7/29/2019; a Swimming Pool Grading Plan, prepared by MGC Associates dated 2/20/22, consisting of 1 sheet; and a Wetlands/Transition Area Investigation report prepared by ETI dated 5/31/22.

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

7. Lisa and Chris Pruss, the Applicants, having an address of 85 Spring House Lane, were duly sworn according to law. The Applicants testified that they moved to the Property in 2019 and, with help from Mr. Schley, determined that the rear patio that caused the existing impervious coverage exceedance was constructed sometime after 2003 when a predecessor owner received front-yard setback relief from the Board to construct a porch. They described the pool as a "Hamptons style" with modest coping and trim.

8. The Applicants introduced, as exhibits, the following:

**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 pool patio; and

**Exhibit A-5** - Copy of 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 to 24.35%.

9. The Applicants stipulated to installing a pool compliant fence. They described the existing evergreen screening and testified that they discussed their project with their neighbors at #s 8, 5, 19 and all were supportive of the proposal. They also explained that their house backs up to the field and William Annin Middle School, such that they have only one immediately adjacent residential neighbor.

10. The Applicants addressed the comments set forth in the July 1, 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 June 21, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn, and further stipulated to complying with same. On discussion of the July 1, 2022 Review Letter prepared by Ms. Dewitt, Chairperson of the Environmental Commission, the Applicants stipulated to putting the soil erosion fence to the edge of the rear driveway and the tracking pad to provide access to the construction area, and testified that there will be no trees removed.

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 4 to 1, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the excess lot coverage under N.J.S.A. 40:55D-70(c)(2).

### **The Subsection "c(2)" Positive Criteria:**

13. As to the positive criteria for "c(2)" or "flexible c" variance relief, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated

therewith. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that the excess lot coverage associated with the proposed pool does not raise a massing concern, it is effectively screened by existing landscaping, and pools have been referred to as “stormwater neutral” as opposed to asphalt and other hard surface lot coverage. The Board also recognizes that the Property is a corner lot and backs up to Township open space and William Annin Middle School to the south, such that the proposal only impacts a single residential neighbor to the west. Finally, the Board considers the 243 sq. ft. reduction in the originally proposed lot coverage by virtue of the Applicants’ agreement to eliminate same, be it from the existing patio or otherwise. As such, 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. 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(2)” Negative Criteria:**

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

15. 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 by the existing landscaping, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed



improvements on the adjacent properties. The Board further recognizes that no member of the public objected to the proposal.

16. 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.

17. 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 N.J.S.A. 40:55D-70(c)(2).

WHEREAS, the Board took action on this application at its meeting on July 6, 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 3rd day of August, 2022, that the application of **LISA and CHRIS PRUSS**, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicants' total lot coverage on the Property shall not exceed 24.35% and the Applicants shall have the flexibility of determining where the approximately 243 sq. ft. of previously requested excess lot coverage shall be eliminated from the project;
- (2) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- (3) Given that the proposed 20.0' side and 20.0' rear pool setbacks provide no margin for error, the property lines shall be staked by a professional licensed surveyor prior to any construction;

- (4) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (5) The Applicants shall revise the plan to show the existing evergreen trees located along the side and rear property lines. The limits of disturbance and the proposed grading shall be revised so as not to disturb these existing trees, which shall be protected during construction of the pool and pool fencing in accordance with Township standards, subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (6) Soil from the pool excavation shall be removed from the Site unless the Applicants submit a grading plan showing where the soil will be used on the Site, subject to the review and approval of the Township Engineer;
- (7) The Applicants shall revise the plan to clarify the source of the topography and include the feature held for the assumed datum;
- (8) The Applicants shall revise the limit of disturbance shown on the plans to connect to the existing driveway, and relocate the topsoil stockpile, which is presently shown between the pool and the driveway. The plan shall show whether the existing driveway is to be removed and replaced with stone in the area of the stabilized construction entrance pad and then repaved, and shall show other soil erosion and sediment control measures in accordance with Section 21-42.11 of the Ordinance, subject to review and approval by the Township Engineering Department prior to issuance of a construction permit;
- (9) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (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 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: Amin, Baumann, Tancredi

Those Opposed: NONE

Ineligible: Cambria, Kraus, Pavlosky, Pochtar

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 August 3, 2022.

*Cyndi Kiefer*

---

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

Dated: August 3, 2022

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**MICHAEL and CATHERINE GILBERT  
Case No. ZB22-008**

**RESOLUTION** v5

WHEREAS, **MICHAEL and CATHERINE GILBERT** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of an 18’ by 36’ (648 square foot) inground swimming pool with pervious decking on 3 sides, located to the rear of the dwelling, and the removal of 1,289 sq. ft. of existing patio and 113 sq. ft. of existing driveway, to be located on property identified as Block 6301, Lot 34.03 on the Tax Map, more commonly known as 18 Belmont Court (the “Property”):

A variance to locate an inground 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 July 6, 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 fully conforming lot located in the R-4 (1 acre) Residential Zone with frontage on Belmont Court. The Property is presently improved with a two and one-half-story, single-family residential dwelling, with associated decking, paver patio, and asphalt driveway.

3. The Applicants propose the construction of an 18' by 36' (648 square foot) inground swimming pool with pervious decking on 3 sides, located to the rear of the dwelling, and the removal of 1,289 sq. ft. of existing patio and 113 sq. ft. of existing driveway.

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 pool is not to the rear of the dwelling on adjoining Lot 34.04 to the west.

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

6. The Applicants' proposal is depicted on a map of Survey prepared by Murphy & Hollows Associates, Inc., dated 8/3/2009; a Pool Location and Grading Plan prepared by D.J. Egarian & Associates, Inc., dated 6/3/22, consisting of one (1) sheet; and a Concept Plan prepared by Tapestry Landscape Architecture, dated 8/8/22.

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

8. Frederick B. Zelle, Esq., appeared on behalf of the Applicants and provided an overview of the project, including the removal of portions of the existing patio and driveway sufficient to provide for the additional lot coverage of the proposed pool while still eliminating an existing lot coverage exceedance of 16.2% versus 15% maximum permitted.

9. David J. Egarian, P.E., of D.J. Egarian & Associates, Inc., 271 Route 46, Suite G208, Fairfield, New Jersey was duly sworn, provided his qualifications, and was accepted by the Board as an expert in civil engineering. Mr. Egarian described the existing and proposed conditions, including the existing 30'-wide tree conservation easement and 25'-wide basin maintenance easement, both of which stretch across the rear of the Property, thus severely restricting the location of a pool in a conforming location.

10. Mr. Egarian introduced into evidence, as **Exhibit A-1**, a highlighted version of the pool location and grading plan, dated 6/3/22, and depicted the small triangular area to the remote southwesterly rear portion of the Property, where a very small pool conceivably could be located behind the rear dwelling line of the neighbor at Lot 34.04; however, such location would present safety concerns located so far away from the Applicants' dwelling, and it would be much closer to the dwelling on adjacent Lot 34.04. Moreover, he testified that the Board granted similar pool location relief to the owners of Lot 34.04 a few years ago.

11. Mr. Egarian also demonstrated that the reasonably sized 648 sq. ft. pool and all associated improvements and retaining walls were located entirely outside of both easements. The Applicants stipulated to pool code compliant fencing.

12. Mr. Egarian addressed the comments set forth in the July 1, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and stipulated, as a condition of approval, to complying with same. He also addressed the comments set forth in the June 21, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn, and further stipulated to complying with same. On discussion of the June 28, 2022 Review Letter prepared by Ms. Dewitt, Chairperson of the Environmental Commission, Mr. Egarian confirmed that the deck will allow water infiltration/seepage to the ground beneath, and stipulated to the balance of the recommendations set forth therein.

13. Mr. Egarian addressed the adequacy of the existing and proposed screening between the proposed pool and the dwelling on adjacent Lot 34.04, recognizing that same is more than 150 feet away and that the Applicants' dwelling partially obscures views of the pool area, and same is further screened by existing fencing and landscaping.

14. Mr. Zelley represented that he took the photographs submitted with the application materials in March of 2022 and that they accurately depict the existing conditions of the dwelling and the Property.

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

### **DECISION**

16. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the proposed pool location under both N.J.S.A. 40:55D-70(c)(1).

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

17. As to the positive criteria for the "c(1)" or "hardship" variance relief for the requested pool location deviation, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants. The Board finds that the exceptionally unique physical features affecting the Property include the location and orientation of the adjacent dwellings and the substantially wide and long easements along the rear of the Applicants' Property.

18. The Applicants' dwelling and the dwelling on adjoining Lot 34.04 to the west are located on the bulb of the Belmont Court cul-de-sac, and as a result, the fronts of the two dwellings are angled toward each other, making it nearly impossible for the Applicants to comply with the pool location requirement. A conforming pool location may be possible, though impractical, within a  $\pm 500$ sf triangular area located near the southwesterly corner of the Property, immediately adjacent to an existing conversation easement. It is noted that former owners of adjoining Lot

34.04 faced a similar situation in 2010, when they obtained a variance to construct a now-existing pool which is not to the rear of the Applicants' dwelling.

19. 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.

20. 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(1)" Negative Criteria:**

21. As to the negative criteria required for variance relief pursuant to subsections c(1), 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.

22. 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 by the existing 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 objected to the proposal, further evidencing no substantial detriment to the character of the neighborhood.

23. 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.

24. 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 N.J.S.A. 40:55D-70(c)(1).

WHEREAS, the Board took action on this application at its meeting on July 6, 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 3rd day of August, 2022, that the application of **MICHAEL and CATHERINE GILBERT**, 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 Pool Location & Grading Plan prepared by DJ Egarian & Associates, not the Concept Plan prepared by Tapestry Landscape Architecture, shall govern the installation of the pool and related improvements;
- (3) The Applicants shall revise the plan to include details of the proposed pool decking, to clarify the limits of the 216sf of existing walkway/patio that is proposed to remain, and to correct the north arrow, prior to the issuance of a construction permit;

- (4) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (5) Soil erosion & sediment control measures must be provided in accordance with §21-42.11. The measures shown on the plan shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit. If the proposed area of disturbance exceeds 5,000sf, then the Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans;
- (6) Soil from the pool excavation shall be removed from the Site unless the Applicants submit a grading plan showing where the soil will be used on the Site, subject to the review and approval of the Township Engineer;
- (7) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (8) The plan shall be revised to include the details of the proposed retaining wall;
- (9) The plan shall be revised to include the details of the proposed new curbing to be constructed along the driveway;
- (10) 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;
- (11) The Applicants shall install a pool code compliant fence around the pool;
- (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 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
- (14) 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: Amin, Baumann, Pochtar, Tancredi

Those Opposed: NONE

Ineligible: Cambria, Kraus, Pavlosky

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 August 3, 2022.

*Cyndi Kiefer*

---

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

Dated: August 3, 2022