

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v2
Regular Meeting
September 7, 2022

CALL TO ORDER

Chairwoman Genirs called the meeting to order at 7:32 PM.

FLAG SALUTE

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

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the 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, Genirs, Kraus, Pavlosky, Pochtar, Tancredi
Members Absent: 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 Mr. Pavlosky, seconded by Mr. Tancredi, all eligible and in favor, the absence of Mr. Helverson was excused.

PUBLIC HEARING

New Jersey American Water Co. Inc.; Block 1609, Lot 25; East Oak Street (rear); Preliminary/Final Site Plan, Variances; ZB22-014 - Chairwoman Genirs announced that this application would be carried with no further notice required, to the 11/09/2022 meeting as requested by the Applicant.

APPROVAL OF MINUTES

August 3, 2022 – Regular Session – On motion by Mr. Kraus, seconded by Mr. Cambria, all eligible in favor and carried, the minutes were adopted as drafted.

APPROVAL OF RESOLUTIONS

J. Nan Realty Company, LLC; Block 3603 Lot 1; 18 Columbia Road; ZB18-011C (approved) – Ms. Baumann moved to approve the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

Blauvelt, Richard S.; Block 1603, Lot 21.01; 20 Lewis Street; ZB07-012A (approved) – Ms. Pochtar moved to approve the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

Jordano Living Trust; Block 8802, Lot 25; 37 St. Nickolas Way; ZB22-011 (approved) – Mr. Tancredi moved to approve the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

Monk, Trevor & Caren; Block 8602, Lot 82; 489 King George Road; ZB22-013 (approved) – Ms. Baumann moved to approve the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

Kotel, Ira L. & Amy G.; Block 4301, Lot 11; 18 Colts Glen Lane; ZB22-015 (approved) – Ms. Pochtar moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Raustad, Gregory & Katie; Block 6301 Lot 4; 211 Stonehouse Road; Bulk Variances; ZB22-016

Present:	Lawrence Pranzo, RA, Architect for the Applicants
	John C. Salerno, Contractor for the Applicants
	Gregory & Katie Raustad, Applicants

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

Katie Raustad, Applicant residing at 211 Stonehouse Road, testified that the proposed project, demolition of an existing house and construction of a new dwelling, requires relief for minimum lot width, minimum rear setback (for an existing shed) and maximum lot coverage. The existing pool, shed and patio are to remain unchanged. The shed, which was present on the property when the Raustads purchased it, had been built without permits. Mr. Raustad added that it is screened by vegetation and a fence and that there had never been any complaints from neighbors about its location. Mrs. Raustad confirmed that she took the pictures submitted with the application and that they accurately depict the property as it currently exists. She stated that two (2) dying cherry trees in the front yard and four (4) dead ash trees in the rear yard would be removed. Finally, she stated that she had spoken with her neighbors and that all of their comments were positive.

Mrs. Raustad agreed with Mr. Quinn's suggestion that the proposed drywell be reduced in size to handle the net increase in coverage rather than the entire project, as originally proposed. Both Applicants agreed that the proposed side-loading garage, which requires extra driveway space to turn around than a front-loading garage, and the fact that the driveway will not be straight, add to the magnitude of the coverage deviation.

Lawrence Pranzo, RA, architect with the firm of *Pran and Co.*, Chester, NJ, was accepted by the Board as an expert in the field of architecture. He testified that the steps from the doors along the rear of the new house will be added to the plans and the coverage calculations would be adjusted accordingly. He confirmed that there will be no additional patios or walkways from those doors and that the existing patio/porch will have a permanent roof and will be open on three (3) sides.

Noting that the proposed dwelling had been moved forward to eliminate some of the driveway coverage, and that the front porch roof may encroach into the minimum required front yard, Mr. Schley suggested that 25 square feet of extra coverage be added to the application request to cover an extension of the driveway if the house must be moved back. The Applicants agreed.

The comments in the memos from Mr. Schley (09/01/2022) and Mr. Quinn (09/05/2022) 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 for both "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variance relief. Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Dietrich, Jennifer; Block 1616, Lot 8; 33 Manchester Drive; Conditional Use Variance, Bulk Variances; ZB22-007

Present:	Frederick B. Zelle, Esq., Attorney for the Applicant
	Stephen E. Parker, PE, Engineer for the Applicant
	Jennifer Dietrich, Applicant

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. Ms. Dietrich, Mr. Parker, 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, a certified personal trainer, and stated that the proposal to convert a portion of an existing two-car garage into a home office/studio for her practice requires bulk variances for parking. He added that the proposal also requires either a "d(3)" conditional use variance to permit a deviation from a conditional use standard or a "d(1)" use variance to allow a use which is not permitted in the zone. Finally, Mr. Zelle stated that in October, he had taken the photos submitted with the application and that Ms. Dietrich took the ones of the shed which were submitted later.

Jennifer Dietrich, Applicant residing at 33 Manchester Drive, testified that in her practice (which she markets as a private studio), she usually works with one (1) client at a time and with a 15-minute buffer between sessions so that no one is kept waiting. She stipulated to having no more than two (2) clients at a time and to maintaining the 15-minute buffer. The studio contains free weights, a squat rack, machinery and other training items such as resistance bands and she confirmed that there will be no employees now or in the foreseeable future. She testified that the studio is in the front portion of the garage (along the garage doors) with a wall dividing it from the back portion of the garage which is attached to the living area of the house.

Ms. Dietrich stated when she and her family moved in, the shed was installed (with permits) to store personal items. When the addition was built, the shed was moved to its present location and she confirmed that all the inspections for the addition and for the shed were conducted. She testified that until she filed this application, she had never been notified that the shed encroaches into the side setback. Because of the cost involved and the potential loss of existing landscaping, she is asking for variance relief rather than having to move the shed, adding that it will only be used for personal storage and that she had never heard any negative comments from the surrounding neighbors.

Mr. Schley noted that because the gravel area by the man door from the studio on the side of the garage is used as a walkway to enter/exit the studio (the a/c unit is also located there) and a second gravel area is used as a patio, they are both considered impervious coverage and must be added to the coverage calculations. Ms. Dietrich testified that both areas and a drywell were installed as stormwater runoff mitigation measures when the addition was built.

The hearing was opened to the public for questions of this witness. Todd Edelstein, 172 Riverside Drive, questioned the number of egresses. Donna P. Legband, 11 Brittany Place, owner the property adjacent to the subject property

(Lot 9 – 5 Tanglewood Lane), asked about the Applicant's online posting offering boot camps. Ms. Dietrich responded that they would be held offsite. Hearing no further questions, that portion of the hearing was closed.

Stephen E. Parker, PE, professional engineer with the firm of *Parker Engineering & Surveying PC*, Somerville, NJ, was accepted by the Board as an expert in the field of engineering. He testified that there would be no changes made to the exterior of the garage and that since there is sufficient space in the driveway based on the proposed usage, there would be no parking issues. He added that the impervious lot coverage will not exceed the maximum allowed even when the two (2) gravel areas are added. Finally, he stated that the shed in its present location, does not present any visual issues since it is buffered by existing vegetation and located approximately 140 feet from the nearest house. Ms. Dietrich added that there is lighting (manually controlled) around the garage and felt that it is sufficient for those clients arriving after dark. Finally, she stipulated that when necessary, her clients would park on the street only during the daytime. She also stipulated that there would be no signage or anything else identifying the business on the property.

The comments in the memos from Mr. Schley (09/01/2022), Mr. Quinn (09/05/2022) and the Environmental Commission (07/26/2022) were addressed to the satisfaction of the Board.

The hearing was opened to the public for questions of these witnesses. Hearing none, that portion of the hearing was closed and then opened for public comment. Donna P. Legband, 11 Brittany Place was duly sworn and expressed concern about the impact of the noise and headlights on the adjacent property, 5 Tanglewood Lane, which she owns. She stated that she had removed the vegetative buffer shown in the Applicant's photos which had served as a visual "barrier" between the two (2) properties and entered into evidence, **Exhibit O-1**, an 8.5 X 11 color photo of the current view from 5 Tanglewood Lane of the subject property. Hearing no further comments, that portion of the hearing was closed.

Mr. Zelle offered his summation and opined that this use qualifies as a health professional use and therefore for a "d(3)" conditional use variance.

A straw poll indicated that most of the members felt the proposed use did qualify as a conditional use variance.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria for the bulk variances requested and for a "d(3)" conditional use variance. 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 Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Tancredi seconded.

Roll call:	Aye:	Baumann, Cambria, Genirs, Kraus, Pochtar, Tancredi
	Nay:	Pavlosky
	Ineligible:	Amin

Motion carried.

COMMENTS FROM MEMBERS OR STAFF – Ms. Kiefer reminded the Board that the Finley Real Estate LLC application is scheduled to be heard on Thursday, September 15, 2022.

ADJOURN

Moved by Mr. Kraus, seconded by Chairwoman Genirs, all in favor and carried, the meeting was adjourned at 10:15 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Approved as drafted 10-05-2022

09/15/2022 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**J. NAN REALTY COMPANY, LLC
Case No. ZB18-011C**

RESOLUTION

WHEREAS, **J. NAN REALTY COMPANY, LLC** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for a modification of a condition of approval as set forth in the November 7, 2018 Resolution of the Board, wherein site plan approval and use and bulk variance relief was granted on property identified as Block 3603, Lot 1 on the Township Tax Map, more commonly known as 18 Columbia Road:

A modification of Condition 35(b) of the November 7, 2018 Resolution such that the Applicant shall have until November 7, 2023 to apply for and obtain a construction permit, and also have two years (rather than one year) from the date of issuance of the construction permit to commence construction and obtain a permanent Certificate of Occupancy; and

WHEREAS, a public hearing was held on such application on August 3, 2022; 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. By resolution adopted on November 7, 2018 (which is incorporated by reference herein), the Board granted preliminary and final site plan and use and bulk variance approval to permit the Applicant to construct an approximately 4,900 square foot, two-story, multifamily residential building containing four dwelling units.

2. Condition 35(b) of the Resolution states, “Time to Obtain Construction Permits, Commence and Complete Construction, and Obtain Certificates of Occupancy.” The applicant shall apply for and obtain a construction permit within two years of the adoption of the Board’s

resolution. If during said two-year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the approval shall automatically expire and become null and void. The applicant shall also have one year from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy. If during said one year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the approval shall automatically expire and become null and void.”

3. Therefore, the Applicant was required to apply for and obtain a construction permit within two years of the adoption of the resolution, i.e., by November 7, 2020.

4. By letter dated July 14, 2022, the Applicant requested an extension of the timeframe.

5. David Schley, AICP/PP, the Township/Board Planner, and Thomas Quinn, P.E., the Board Engineer, both were duly sworn according to law.

6. Frederick B. Zelle, Esq. appearing on behalf of the Applicant, reiterated the request for an extension pursuant to the July 14th letter.

7. Mr. Schley recognized that the Applicant may also want to request an increase from one year to two years, the period of time post issuance of the construction permit to commence construction and obtain a permanent Certificate of Occupancy. Mr. Zelle amended the request to include same.

8. No member of the public commented on the application.

9. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicant has satisfied its burden of proving an entitlement to the requested modification of Condition 35(b) of the November 7, 2018 Resolution.

10. The Board finds that good cause exists to modify Condition 35(b) to extend the deadlines therein as requested, based upon the reasons set forth in Mr. Zelley's July 14, 2022 letter to the Board.

WHEREAS, the Board took action on this application at its meeting on August 3, 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 7th day of September, 2022, that the application of **J. NAN REALTY COMPANY, LLC**, as aforesaid, be, and is hereby, granted, subject to the following conditions:

- (1) The Applicant shall have until November 7, 2023 to apply for and obtain a construction permit for the subject approved development, and further shall have two (2) years from the date of issuance of the construction permit to commence construction and obtain a permanent Certificate of Occupancy;
- (2) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (3) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein; and
- (4) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State.

ROLL CALL VOTE:

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

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of September 7, 2022.

Cyndi Kiefer

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

Dated: September 7, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**RICHARD S. BLAUVELT
Case No. ZB07-012A**

RESOLUTION

WHEREAS, **RICHARD S. BLAUVELT** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for a modification of a condition of approval as set forth in the September 5, 2007 Resolution of the Board, wherein subdivision and variance relief was granted for property identified as Block 1603, Lot 21 (now Lots 21.01 and 21.02) on the Tax Map, more commonly known as 20 Lewis Street (the “Property”:

A modification of Condition c of the September 5, 2007 Resolution to allow the second floor of the existing florist shop to be occupied by any uses permitted in the B-3 Zone, excluding any use that would increase the parking requirement to greater than 13 parking spaces, which was the number of spaces required for the uses approved by the Board in the 2007 Resolution; and

WHEREAS, a public hearing on notice was held on such application August 3, 2022, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Property is occupied by a two-story, 2,660 sq. ft. building that was converted by the Applicant from a dwelling into a florist shop pursuant to site plan, subdivision and variance approvals granted by the Board as set forth in a resolution adopted on September 5, 2007. The Applicant’s lot was originally larger; however, the 2007 approvals provided for the Applicant to construct eight parking spaces at the rear of the original lot and dedicate those spaces (existing Lot 21.02) to the Township as an expansion of the municipal parking lot. In addition to the eight spaces

in the municipal lot, one handicapped parking space is located on the Applicant's lot in front of the building.

2. As approved in 2007, the first floor of the building is occupied by the Applicant's florist shop, and the second floor is occupied by offices for the florist shop. Consistent with that usage, Condition c of the Board's September 5, 2007 resolution states:

"c. The second floor offices shall be used only in conjunction with the operation of the first floor business, and not for rental to third parties;"

The Applicant seeks to modify Condition c to allow the second floor to be occupied by any use permitted in the B-3 Zone, excluding any use that would increase the parking requirement beyond 13 spaces, which is the number of spaces required for the uses approved in 2007.

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

4. Frederick B. Zelle, Esq. appeared on behalf of the Applicant. Mr. Zelle explained the 2007 approval, by which the Applicant was permitted to convert a 180-year-old single-family dwelling in the B-3 Historic Business Zone for use as a commercial florist, including the Applicant's subdivision of the rear portion of the lot and dedication of same to the Township for use as 8 parking spaces added to the adjacent municipal parking lot. He explained that the 2007 approval also required Condition c, which was not required of similar commercial use approvals of nearby residential structures, which restriction is now severely limiting the ability of the Applicant to sell the Property, as he wishes to retire from the florist business.

5. Richard Blauvelt, 20 Lewis Street, was duly sworn according to law. He testified he is a 4th generation Basking Ridge resident and his family owned the Property and the home since it was built 183 years ago. Mr. Blauvelt explained that the restriction on the second floor has presented a significant hardship as it has severely limited his ability to sell the Property since

it is a large structure and no prospective purchasers want to use the entirety of the building for a single commercial use. He also testified that his florist business uses only a portion of the first floor and none of the second floor, reflective of the overall need for less retail space in today's economy.

6. Mr. Blauvelt contended that the 8 nearby parking spaces in the municipal lot, together with the ADA compliant space in the front of the Property on Lewis Street, provide sufficient parking for the existing and similar uses at the Property, and that nearby properties have multiple business uses and sufficient parking exists nearby. He noted that the municipal lot spaces closest to his property (i.e. those constructed on the land that he donated to the township in 2007) are presently rarely used.

7. Mr. Blauvelt testified the first floor has 1,851 sq. ft. of floor area and the second floor has 808 sq. ft. of floor area, and while there is only one internal staircase, the structure still could be divided into separate business, or business and apartment, uses. The Applicant stipulated to a maximum of a total of 3 business, or business and residential, tenants at the Property.

8. On Board questioning, Mr. Schley pointed out that any increase of floor area would require F.A.R. relief from the Board, such that an expansion would involve an opportunity for the Board to consider parking impacts, among other issues.

9. No member of the public commented on the application.

10. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicant has satisfied his burden of proving an entitlement to the requested modification of Condition c of the September 5, 2007 Resolution.

11. The Board finds that good cause exists to modify Condition c so as to relax the usage restriction that applies to the second floor.

12. The approvals granted by the Board in 2007 include a variance permitting nine parking spaces when 13 spaces were required. The 2007 requirement was calculated as follows:

- First Floor (retail): $5 \text{ spaces}/1,000\text{sf} \times 1,851\text{sf} = 9.3 \text{ spaces required}$
- Second Floor (office): $4 \text{ spaces}/1,000\text{sf} \times 808\text{sf} = 3.2 \text{ spaces required}$
- Total Required: 13 spaces

The B-3 Zone permits retail sales/services, professional offices, and restaurants. In addition, one dwelling unit is permitted in a building which also contains a business use. Depending upon how the entirety of the building is used, the use most likely to increase the parking requirement beyond 13 spaces is a restaurant or a medical office. The parking requirements for those uses are:

- Restaurant: 1 space/3 seats or 1 space/50sf, whichever is greater.
- Medical Office: 1 space/200sf, plus 1 space/physician on duty.

13. The Board finds that the relaxation of the restriction on the second floor is reasonable and warranted, and that the new limitation on the uses by virtue of their corresponding parking requirements, taken together with the limitation on the number of separate businesses, or business and residential, tenants, satisfies the intent of Condition c and is a better planning and zoning alternative in light of the present circumstances.

14. The Board also finds that the Applicant has satisfied the negative criteria, that is, he has 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. In this regard, the Board notes that there was no public opposition.

WHEREAS, the Board took action on this application at its meeting on August 3, 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 7th day of September, 2022, that the application of **RICHARD S. BLAUVELT**, as aforesaid, be, and is hereby, granted, subject to the following conditions:

- 1) The Property shall contain a maximum of a total of 3 business, or business and residential, tenants at the Property;
- 2) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- 3) In the event the building were to contain an apartment, the Applicant shall indicate to the satisfaction of the Township zoning officer where the residents will park, given that overnight parking is not permitted on Lewis Street. If parking for the apartment is dependent upon obtaining a permit from the Township, then the Applicant shall obtain said permit prior to issuance of any construction permit relating to the apartment;
- 4) The Applicant shall ensure that, with the exception of the requested modification, the Property shall remain compliant with all conditions of the 2007 approval;
- 5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein; and
- 6) 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.

ROLL CALL VOTE:

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

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of September 7, 2022.

Cyndi Kiefer

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

Dated: September 7, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**JORDANO LIVING TRUST
Case No. ZB22-011**

RESOLUTION

WHEREAS, **JORDANO LIVING TRUST** (the “Applicant”) has 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 various improvements in the rear yard of the existing dwelling on property identified as Block 8802, Lot 25 on the Tax Map, more commonly known as 37 Saint Nickolas Way (the “Property”):

A variance for a proposed lot coverage of 16.28%, whereas the existing lot coverage is 16.05%, and the maximum permitted lot coverage is 15% in the R-5 (1 acre) Residential Zone, 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 August 3, 2022, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and 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 lot in the R-5 (1 acre) Residential Zone located on the bulb of a cul-de-sac. The Property is presently improved with a two-story, single-family residential dwelling and associated residential improvements, including an inground pool/spa and surrounding patio.
3. The Applicant proposes various improvements to the rear of the existing dwelling, including:

- a. Replacement of an existing 211 sq. ft. screened porch with a 16' x 26' (416 sq. ft.) screened porch;
 - b. Replacement of an existing 681 sq. ft. open deck with a 1,439 sq. ft. open deck, which includes a fire pit;
 - c. Addition of a 10' x 14' (140 sq. ft.) shed;
 - d. Installation of a pool compliant fence enclosing the rear yard;
 - e. Replacement of an existing retaining wall; and
 - f. Removal of various existing concrete and stepping stone walkways, and addition of a couple new stepping stone walkways.
4. The excess lot coverage variance is governed by the criteria of N.J.S.A. 40:55D-70(c).
5. The Applicant's proposal is depicted on a Survey prepared by Midstate Engineering, Inc., dated 3/21/2022 and a Variance Plan, also prepared by Midstate Engineering, Inc., dated 4/1/22, last revised 5/25/22, consisting of 1 sheet.
6. David Schley, P.P., A.I.C.P, the Board Planner, and Thomas Quinn, PE, CME, the Board Engineer, both were duly sworn according to law.
7. Frederick B. Zelle, Esq. entered his appearance on behalf of the Applicant and summarized the application and the relief requested.
8. Mr. Zelle explained that he took the photographs submitted with the application in the Spring of 2022 and they were an accurate depiction of the Property as it presently exists. He also explained that the Applicant's engineer could not appear due to a scheduling error, but that his appearance should not be necessary given that there are no stormwater management issues relating to the application.
9. John Thomas Jordano and Carol Tjon Jordano, 37 St. Nickolas Way, were duly sworn. Mr. Jordano testified that the Applicants purchased the home in 1996 and installed a pool

in 1996 and now seek to replace an existing screened porch and deck, and install other rear yard improvements.

10. Mr. Jordano testified that the zoning department inspected, and issued final approval for, the pool and surrounding patio without advising the Jordanos that same resulted in the Property exceeding the maximum permitted impervious coverage and requiring relief for same. He testified the decking was approved, as was the lighting and related electrical work, and the fence was deemed pool compliant, and no mention was made of any stormwater management measures needing to be installed.

11. Mr. Jordano testified that the porch and deck are now more than 26 years old and in need of replacement due to significant disrepair, and the couple wishes to install a shed (so they can use their garage for vehicle parking), a firepit, and new pool compliant fencing around the perimeter of the Property.

12. The excess coverage is generally attributable to the existing pool patio, which the Applicant proposes to reduce in size by 66 sq. ft., from 1,439 sq. ft. (2.35%) to 1,373 sq. ft. (2.24%). While the pool plan approved by the Township in 1996 did not show a patio, the Applicants indicate the patio was constructed at the same time as the pool.

13. Mr. Jordano stipulated that:

- a. The deck floor will have gaps between boards rather than “tongue in groove” boards such that it will be pervious;
- b. The Applicant will install landscape screening subject to the review and approval of the Board Planner for screening the view of the pool and related improvements from the streetscape and neighboring residential properties; and
- c. The new fence will be pool compliant with a self-latching gate.

14. Mr. Jordano testified regarding the recent removal of dead and wind damaged trees. He stipulated to compliance with the comments in the Board Planner’s and the Board Engineer’s

memos, and the Environmental Commission's request that silt fence be installed by the retaining wall during reconstruction, in its memo of July 26, 2022.

DECISION

15. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied its burden of proving an entitlement to 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:

16. As to the positive criteria for "c(2)" or "flexible c" variance relief, the Board finds that the Applicant has satisfied its 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 while the proposal adds 773 sq. ft. of new impervious coverage, the Applicant is removing 631 sq. ft. of existing impervious coverage, resulting in a net increase of only 142 sq. ft. 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:

17. As to the negative criteria required for variance relief pursuant to subsection c(2), the Board finds that the Applicant has 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 Applicant has 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 Applicant 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.

19. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicant has 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.

20. Based upon the foregoing, the Board finds that the Applicant has 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 August 3, 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 7th day of September, 2022, that the application of **JORDANO LIVING TRUST**, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) 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;
- (3) The Applicant shall revise the plan to provide soil erosion and sediment control measures in accordance with Section 21-42.11 of the Ordinance, subject to the review and approval by the Township Engineering Department prior to issuance of a construction permit;
- (4) The Applicant shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission;
- (5) The Applicant shall revise the plan to confirm that the deck floor will have gaps between boards rather than "tongue in groove" boards such that it will be pervious;
- (6) The Applicant shall install landscape screening subject to the review and approval of the Board Planner for screening the view of the pool and related improvements from the streetscape and neighboring residential properties; and
- (7) The new fence shall be pool compliant with a self-latching gate.
- (8) The Applicant shall revise the plans to depict a realistic limit of disturbance area that accounts for the larger disturbance associated with the construction entrance and soil movement and same shall be subject to the review and approval of the Township Engineering Department;
- (9) 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;
- (10) The Applicant shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and

- (11) 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, Cambria, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of September 7, 2022.

Cyndi Kiefer

Cyndi Kiefer, Secretary

ZONING BOARD OF ADJUSTMENT

OF THE TOWNSHIP OF BERNARDS, COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: September 7, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**TREVOR and CAREN MONK
Case No. ZB22-013**

RESOLUTION

WHEREAS, **TREVOR and CAREN MONK** (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 removal of a two-story, 876 sq. ft. portion of the existing dwelling and, in its place, the construction of a two-story, 2,032 sq. ft. addition (1,156 sq. ft. net increase in floor area) to the existing dwelling, located on property identified as Block 8602, Lot 82 on the Tax Map, more commonly known as 489 King George Road (the “Property”):

A variance for a front-yard setback of 65 ft. to the addition, whereas the existing front-yard setback is 28.5 ft. to the dwelling and the maximum required front-yard setback in the R-5 (1 acre) Residential Zone is 75 ft., 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 August 3, 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 lot with frontage on King George Road, located in the R-5 (1 acre) Residential Zone, presently improved with a two-story frame dwelling, and associated improvements.
3. The Applicants propose to remove a two-story, 876 sq. ft. portion of the existing dwelling and in its place construct a two-story, 2,032 sq. ft. addition (1,156 sq. ft. net increase in

floor area). The addition includes a renovated kitchen, breakfast area, mudroom, and bathroom on the first floor (1,002 sq. ft.), and a master suite, bedroom, and laundry room on the second floor (1,030 sq. ft.). An existing multi-level deck on the west side of the existing dwelling is to be removed, and a new deck is proposed at the rear (north wall) of the proposed addition. Also, a portion of interior driveway is to be realigned, resulting in a 300 sq. ft. reduction in lot coverage, which offsets the 290 sq. ft. increase in coverage caused by the proposed addition. The requested variance relief for the front yard setback is governed by the criteria of N.J.S.A. 40:55D-70(c).

4. The Applicants' proposal was depicted on a Location Survey prepared by Michael A. Catalano, dated 7/19/2016, and Architectural Plans prepared by Jonathan E. Booth Architect, latest revision dated 5/11/22 (6 sheets).

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

6. Trevor Monk, one of the Applicants, having an address of 489 King George Road, was duly sworn according to law. Mr. Monk testified that he is in the construction business, he and his wife have 4 children and they need to expand their home. The portion of the house being replaced with a two-story addition was constructed on dirt in the late 1800's and must be rebuilt as renovation is not a viable option.

7. Jonathan E. Booth, AIA, 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 introduced into evidence as **Exhibit A-1** a colorized version of sheet 2 of the plan set. Mr. Booth described the Property and the zoning relief sought. He explained that, given the orientation of the dwelling, which faces the south side property line rather than King George Road, the Property has 2 front yards. He

stipulated to revising the plans per the Board Planner's memo at comment #2. Mr. Booth explained the project, specifically removing an 826 sq. ft. wing of the house and replacing same with a two-story 2,032 sq. ft. addition. He also explained that, while the proposed addition would increase impervious coverage by 290 sq. ft., the Applicants are removing 300 sq. ft. of existing driveway on the southside of the Property, thus resulting in a net reduction of the preexisting, non-conforming lot coverage from 16.15% to 16.14%.

8. Mr. Booth went through the architectural plans and the Applicants stipulated that the exterior of the addition will be substantially similar in color, materials and architectural style to the balance of the exterior of the dwelling. He contended that the proposal advances the purposes of zoning, including promoting a desirable visual environment, as set forth in subsection (e) of Section 2 of the Municipal Land Use Law ("MLUL"). He also contended that it would increase the functionality of the home. Mr. Booth also contended that the proposed addition could not be located in a conforming location, given the location and orientation of the existing dwelling.

9. Mr. Booth identified and explained 6 photographs submitted with the application materials. The Applicants stipulated to submitting a tree protection, removal and replacement plan, subject to the review and approval of the Board Planner.

10. Richard DiLorenzo, 495 King George Road, was duly sworn, and he expressed concerns regarding stormwater runoff onto his property and inquired regarding same. Mr. Booth and the Board Engineer explained the slight grade of the Property, such that stormwater runoff should not be directed towards his dwelling. Mr. Booth also explained the location of woods and a berm in between the 2 homes, and the fact that the proposal would not increase the existing impervious coverage. He also explained that the sump pump in the Applicant's basement should not discharge towards Mr. DiLorenzo's home.

DECISION

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

12. 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 lawful pre-existing location and orientation of the subject dwelling. Moreover, the Board finds that such undue hardship was not self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70(c)(1).

13. 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 MLUL 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. 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).

14. 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.

15. 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. 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 only one member of the public expressed concern about the Applicants’ proposal, further evidencing the lack of substantial detriment to the neighborhood.

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 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.

17. 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).

18. 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 both of the alternative bases for such relief under subsection (c)(1) and (2).

WHEREAS, the Board took action on this application at its meeting on August 3, 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 7th day of September, 2022, that the application of **TREVOR and CAREN MONK**, 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 revise the plan to confirm that the deck floor will have gaps between boards rather than "tongue in groove" boards such that it will be pervious;
- (3) The Applicants shall revise the zoning data, building envelopes and dimensions shown on the plans to reflect that the property has two front yards, i.e. one to the east (along King George Road) and one to the south, and that the westerly yard is a side yard and the northerly yard is a rear yard, prior to issuance of a construction permit;
- (4) 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;
- (5) The Applicants shall submit a tree protection plan (and a tree removal and replacement plan, if it becomes applicable), same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (6) The Applicants shall use the "best management practices" available during site work and as part of final site grading and restoration, in addition to preserving and

protecting trees during the site work, consistent with the recommendations of the Environmental Commission;

- (7) Due to the age of the existing dwelling and the potential for in-ground tanks and lead paint, the Applicants shall take proper precautions during demolition;
- (8) The Applicants shall make a good faith effort to recycle, repurpose or gift any material that is not going to be reused with this application post-demolition;
- (9) The Applicants shall ensure that the exterior of the addition is substantially similar in color, materials, and architectural style to the balance of the exterior of the dwelling;
- (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, Cambria, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of September 7, 2022.

Cyndi Kiefer

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

Dated: September 7, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**IRA and AMY KOTEL
Case No. ZB22-015**

RESOLUTION

WHEREAS, **IRA and AMY KOTEL** (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’ x by 45’ (940 square foot) inground swimming pool with a spa, and surrounding patio/walkway in the rear of the existing dwelling, on property identified as Block 4301, Lot 11 on the Tax Map, more commonly known as 18 Colts Glen 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 August 3, 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 located in the R-1 (3 acre) Residential Zone with frontage on Colts Glen Lane. The Property is presently improved with a two-story, single-family residential dwelling and associated improvements.

3. The Applicants propose the construction of a 20' x by 45' (940 square foot) inground swimming pool with a spa, and surrounding patio/walkway, 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 10 (40 Colts Glen Lane) to the west or Lot 14 (16 Meeker Road) to the rear/south.

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 Variance and Grading Plan prepared by EDH Engineering Services, LLC, dated March 30, 2022, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by Keith M. Ludwig, L.L.S., dated January 17, 2022, unrevised, same consisting of one (1) sheet; wetlands regulatory assessment by PK Environmental, dated May 24, 2021; and floor plans and elevations, prepared by TLA Design, LLC, dated May 11, 2022.

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

8. Ira and Amy Kotel, the Applicants, having an address of 18 Colts Glen Lane, were duly sworn according to law. The Kotels explained that the project requires variance relief for the location of the pool (not behind the rear building line of adjacent dwellings).

9. Mrs. Kotel testified that the concept photo submitted depicted a pool similar to that which is proposed. Mr. Kotel testified that the Applicants "squeezed" the proposed pool in between the wetlands on one side, and 2 septic fields (old and new) on the other side, and that,

given the location and orientation of his home and the homes on the adjacent lots, there was no possible conforming location for the pool.

10. Mr. Kotel testified that his realtor, who was present, took the photograph submitted, in the Fall of 2020 when they purchased the home, and that it is an accurate depiction of what presently exists and the proposed location of the pool. He testified as to the significant existing landscape screening between the proposed pool and the neighboring properties. He stipulated to enhancing the landscape screening and to installing a pool compliant fence with self-latching gate. Mr. Kotel testified that there is a fence along the property line of 116 Meeker Avenue (Lot 14), and that the home on 40 Colts Glen Lane (Lot 10) is more than 1,000 feet from the proposed pool location, and there exists a heavily wooded buffer and wetlands between the properties.

11. Mr. Kotel addressed the comments set forth in the Review Memorandum prepared by the Board Planner, Mr. Schley, and stipulated, as a condition of approval, to complying with same. Specifically, as to Comment 4, he testified that the addition of the pool/spa water surface area to the impervious coverage calculation is de minimis and the lot coverage remains below 10%. He also stipulated to the conditions set forth in the August 2, 2022 memo of Board Engineer Quinn.

12. Mary Ruzinko, 17 Colts Glen Lane, was duly sworn and expressed concerns about losing the wetlands across the street and that she and her husband would have a direct view of the Applicant's pool from the front/inside of their home.

13. No other member of the public commented on the Applicants' proposal.

DECISION

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

The Subsection “c(1)” Positive Criteria:

15. 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.

16. Specifically, the Board recognizes that, given the position of the existing dwelling on lot 10, which faces the bulb of the Colts Glen Lane cul-de-sac and, due to intervening wetlands, is over 1,000’ from the Applicants’ dwelling, it is not possible for the Applicants to comply with the pool location requirement as it relates to lot 10. Moreover, the Board recognizes that, given the position of the existing dwelling on lot 14, which is located on a flag lot off Meeker Road, it is not possible for the Applicants to comply with the pool location requirement as it relates to lot 14, unless the pool was to be located within the wooded wetlands area which occupies the majority of the Applicants’ lot.

17. 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:

18. 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.

19. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will be in character with the existing neighborhood and will not have a negative impact on the surrounding properties. In this regard, the Board recognizes that the pool will be sufficiently screened both by the existing and proposed landscaping, as well as the dwelling itself, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. The Board further recognizes that only one neighbor expressed concern about the proposal.

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

21. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested bulk variance relief, under N.J.S.A. 40:55D-70(c)(1).

WHEREAS, the Board took action on this application at its meeting on August 3, 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 7th day of September, 2022, that the application of **IRA and AMY KOTEL**, 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 zoning schedule and lot coverage calculation shown on the variance plan shall be revised to reflect that the pool/spa water surface area does count as lot coverage (the plan may note that the water surface area does not count for stormwater management design purposes). A revised plan shall be submitted prior to the issuance of a construction permit;
- (3) The submitted May 24, 2021 Wetlands Regulatory Assessment indicates that the project will require NJDEP approval if the on-site wetlands have a 150' wide buffer (as opposed to a 50' wide buffer). The wetlands delineation shown on the plans, and the width of the buffer, shall be verified/updated by the Applicant's environmental consultant, and the existing conservation easement shall be amended if necessary. The amended easement, if necessary, shall be prepared by the Township Attorney, and shall be executed by the Applicants and recorded with the Somerset County Clerk prior to the issuance of a construction permit. The existing or amended easement boundary shall be delineated with Township standard markers, which must be bonded prior to the issuance of a construction permit and installed prior to the issuance of a certificate of occupancy;
- (4) The grading plan shows 4" perforated drainage pipe along the perimeter of the pool discharging into an existing swale to the south. The detail shows 4" pipe in a stone trench. This detail shall also depict filter fabric around the excavation in order to prevent the migration of fine soil into the stone trench. The final design and location of this feature shall be subject to review and approval by the Township Engineer prior to the issuance of a construction permit;
- (5) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;

- (6) The Applicants shall confirm that no existing trees are to be removed. Tree protection must be provided along the existing/proposed conservation easement boundary, to the satisfaction of the Township Engineer, prior to any land disturbance;
- (7) 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 prior to any land disturbance;
- (8) The Applicants shall enhance the existing landscape screening to ensure the pool area is adequately screened from Colts Glen Lane, subject to review and approval of the Board Planner;
- (9) The Applicants shall install a pool compliant fence with self-latching gate;
- (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, Cambria, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of September 7, 2022.

Cyndi Kiefer

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

Dated: September 7, 2022