

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v3
Regular Meeting
November 9, 2022

CALL TO ORDER

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

FLAG SALUTE

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

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the 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: Baumann, Genirs, Pavlosky, Pochtar, Tancredi
Members Absent: Amin, Cambria, Helverson, Kraus
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP (via Facetime); Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

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

APPROVAL OF MINUTES

October 5, 2022 – Regular Session – On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted. Ineligible: Pavlosky

October 13, 2022 – Special Session – On motion by Ms. Baumann, seconded by Ms. Pochtar, all eligible in favor and carried, the minutes were adopted as amended.

APPROVAL OF RESOLUTIONS

Jacobs, M./Brady, A.; Block 501, Lot 9; 270 Childs Road; ZB22-019 (approved) – Ms. Baumann moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

Powell, Clare D.; Block 2701, Lot 9; 112 South Alward Avenue; ZB22-020 (approved) – Ms. Pochtar moved to approve the resolution as amended. Mr. Tancredi seconded.

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

Motion carried.

Ventriglia, Karen; Block 10401, Lot 33; 180 Somerville Road; ZB22-018 (approved) – Mr. Tancredi moved to approve the resolution as amended. Ms. Baumann seconded.

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

Motion carried.

[Soled, Leonard & Alexis](#); Block 7702, Lot 10.01; 6 Fenwick Place; ZB22-017 (approved) – Ms. Pochtar moved to approve the resolution as drafted. Ms. Baumann seconded.

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

Motion carried.

[Zhang, Z./Zhao, H.](#); Block 6207, Lot 5; 125 Highland Avenue; ZB22-023 (approved) – Ms. Baumann moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

[Campbell, Bryan & Jessica](#); Block 1806, Lot 9; 34 Spencer Road; ZB22-024 (approved) – Ms. Baumann moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

[Silva, Erik C. & Catia R.](#); Block 8401, Lot 11; 48 Crest Drive; ZB22-025 (approved) – Ms. Pochtar moved to approve the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

PUBLIC HEARING

[New Jersey American Water Co. Inc.](#); Block 1609, Lot 25; East Oak Street (rear); ZB22-014 - Mr. Warner advised that, at the Applicant's request, this application will be carried to the 02/16/2023 meeting *with further notice required*.

COMPLETENESS HEARING

[Signature Acquisitions LLC](#), Block 11201 Lot 3; 150 Allen Road; Preliminary/Final Site Plan, Bulk Variances, d-4 FAR Variance; ZB22-028

Present: Michael Silbert, Esq., Attorney for the Applicant

Michael Silbert, Esq., attorney with the firm of *DiFrancesco Bateman PC*, Warren, NJ, entered his appearance on behalf of the Applicant and requested a waiver (for completeness purposes only) for a Letter of Interpretation (LOI). He stated that the application for the LOI had been made to the NJDEP in July and that it is pending. Mr. Schley and Mr. Quinn were duly sworn and voiced no objections to granting the waiver.

Mr. Warner stated that Applicant's counsel had no objection to the Board's retaining a traffic engineering consultant. Chairwoman Genirs asked Ms. Kiefer to reach out to Joseph A. Fishinger, PE, PP, PTOE, to check for his availability.

Mr. Tancredi moved to grant the Applicant's request for a waiver for an LOI and to deem the application complete. Ms. Baumann seconded.

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

Motion carried.

COMPLETENESS AND PUBLIC HEARING

Light, Kirsten; Block 5001, Lot 2; 13 Victoria Drive; Bulk Variance; ZB22-026

Present: Frederick B. Zelle, Esq., Attorney for the Applicant
William G. Hollows, PE, PLS, PP, Engineer for the Applicant
Kirsten Light, Applicant

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

Frederick B. Zelle, Esq., attorney with a business address of 33 Division Avenue, Millington, NJ entered his appearance on behalf of the Applicant and stated that the proposal requires relief for excess lot coverage and for deficient pool/patio setback for an existing in-ground pool and surrounding patio/walkway.

The following documents were entered into evidence:

- Exhibit A-1 – "Variance Plan" consisting of 2 pages, prepared by W. Hollows, last revised 11/01/2022
- Exhibit A-2 – "Survey" consisting of 1 page, prepared by W. Hollows, last revised 11/03/2022
- Exhibit A-3 – Colorized version of page 2 of the "Variance Plan," prepared by W. Hollows, last revised 11/01/2022

William G. Hollows, PE, PLS, PP, engineer with the firm of *Murphy & Hollows Associates LLC*, Millington, NJ, was accepted by the Board as an expert in the field of civil engineering. He testified that the current total impervious coverage is 19.7% however the Applicant proposes to remove a portion of the driveway and a walkway which would reduce the coverage to 17.45%. In reference to the setback deficiency, Mr. Hollows stated that there is vegetative buffering around that portion of the patio and that there is a barn beyond that obscuring the view of the pool area.

Referring to the Environmental Commission's memo (10/26/2022) suggesting that a stone recharge area be created, Mr. Hollows stated that there is one located in a low spot at the end of the driveway (closest to the street) which captures the water that comes across the property from the rear yard and that water from the pool and patio flows to the rear. He added that because of the poor quality of the soil, drywells are not a viable option.

Chairwoman Genirs opened the hearing to the public for questions of the witness. Kelly A. Targett and Michael T. Storch, both residing at 121 Annin Road (adjacent Lot 44), questioned Mr. Hollows about the direction of the water runoff from the subject property and the elevation of the barn on adjacent property, Lot 43. Hearing no further questions, that portion of the hearing was closed.

Kirsten Light, Applicant residing at 13 Victoria Drive (Lot 2), confirmed that the photos taken by Mr. Zelle and submitted with the application accurately depict the property as it currently exists. She testified that when she purchased the home in 2018, the rear yard was unusable because of drainage issues. To rectify the situation, she removed a significant amount of the existing patio/fire pit in the rear yard and installed two (2) drains to direct the water from the rear yard to the front of the house where the stone drainage area is located (end of the driveway near the street). Once that project was complete, the rear yard no longer flooded and became usable. She also planted trees along the northwest property line (Lot 1 – 1 Victoria Drive) to mitigate any runoff to the neighboring properties. She added that she had not heard any negative comments from the neighbors about the project.

Ms. Light testified that the boulders used to construct the waterfall were placed on compacted soil, not a concrete footing and therefore did not count towards impervious coverage. She confirmed that the contractor was aware that when the project was submitted for construction permits, the proposed coverage was just below the maximum allowed. The overage in actual coverage was discovered when an as-built survey was reviewed and a discussion ensued as to how the overage had come about. Mr. Pavlosky questioned why, considering the increase in coverage, a topographic survey hadn't been done to establish the current elevations and confirm that there is no negative runoff impact on neighboring properties.

The items in Mr. Schley's memo (11/07/2022) were addressed to the satisfaction of the Board. In reference to #8 which noted that the existing driveway piers/columns must be removed or relocated out of the Township's right-of-way, Ms. Light confirmed that they were built without benefit of permit. She agreed to apply for the required permits and to move the piers/columns to a conforming location.

Chairwoman Genirs opened the hearing to the public for questions of this witness. In response to Kelly C. Targett, 121 Annin Road, Ms. Light testified that rainwater filters through the pool cover into the pool. Once the water level in the pool reaches a certain point, a pump drains the water so that the pool doesn't overflow.

A discussion ensued about possible methods to mitigate the stormwater runoff. Mr. Quinn agreed that because of the soil conditions, drywells were not an option. He added that without more topographic information, he could not say whether the water in the back corner of the subject property could be diverted to the front. Noting that there were drainage issues in the area prior to the pool/patio installation, he opined that the project did not exacerbate the issue. He stated that the pool itself is "coverage neutral" because, while stormwater cannot permeate the pool water surface, it is collected in the pool and does not create runoff. Mr. Tancredi opined that the pool represented an improvement over a grassy area which would shed water.

Chairwoman Genirs opened the hearing to the public for comments. Kelly C. Targett, 121 Annin Road, was duly sworn and testified that since she had purchased her property in 2015, she had seen a noticeable increase in the amount of water on her property. Despite numerous attempts to mitigate the issue, she stated that the situation continues to decline.

At Mr. Zelle's request, the meeting was recessed at 9:32 PM and reconvened at 9:42 PM. Ms. Kiefer conducted a roll call.

Mr. Zelle recalled Mr. Hollows to provide further testimony about soil conditions around the subject property since he had lived in that area for many years. He stated that the flooding conditions are generic to the area because there is a lot of shale in the soil and opined that the improvements on the subject property did not negatively impact the flooding. The Board entertained a significant discussion on whether the pool/patio had in any way, adversely affected the runoff patterns impacting the three (3) adjacent properties.

Ms. Targett commented that her property is surrounded by new construction with larger houses and associated improvements built in the last 20 years, all of which have created more impervious coverage in an area which is already struggling with flooding and runoff issues.

Hearing no further comments, that portion of the hearing was closed.

After deliberating, the Board concluded that it did not have enough information to vote on the application. At the Board's request, the Applicant agreed to submit a survey showing the current topographic conditions without objection from the Applicant or the neighbors at 121 Annin Road, Ms. Targett and Mr. Storch, and the hearing was carried to the 02/08/2023 meeting *with no further notice required*. The Applicant extended the Board's time to act through the end of the month of February 2023.

COMMENTS FROM MEMBERS OR STAFF – Chairwoman Genirs cancelled the 11/17/2022 meeting.

ADJOURN - Moved by Ms. Pochtar, seconded by Ms. Baumann, all in favor and carried, the meeting was adjourned at 10:18 PM.

Respectfully submitted,

Cyndi Kiefer

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Adopted as drafted 12-07-2022.

11/28/2022 dssw

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**MATTHEW JACOBS and ALAYNE BRADY
Case No. ZB 22-019**

RESOLUTION

WHEREAS, **MATTHEW JACOBS and ALAYNE BRADY** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following bulk variances in connection with the expansion of the existing one-story dwelling, on the property identified as Block 501, Lot 9 on the Tax Map, more commonly known as 270 Childs Road (the “Property”):

1. A variance for a front-yard setback for the second-floor addition of 79.1 feet, whereas the existing front-yard setback is approximately 55.9 feet, and whereas the minimum required front-yard setback in an R-1 (3 acre) residential zone is 100 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and
2. A variance for a front-yard setback for the rear addition of 96.9 feet, whereas the existing front-yard setback is approximately 55.9 feet, and whereas the minimum required front-yard setback in an R-1 (3 acre) residential zone is 100 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on October 5, 2022, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board reviewed the application and deemed it to be complete.

2. The Property is an irregularly shaped parcel, developed in a manner similar to a flag lot, fronting on Childs Road, and is deficient as to minimum lot area (2.83 acres existing, 3 acres required); minimum lot frontage (100.16 feet existing, 125 feet required); minimum front yard setback distance (55.9 feet existing, 100 feet required); and minimum western side yard setback distance (approximately 35 feet existing, 50 feet required). The Property is presently improved with a one-story, single-family dwelling; a shed; a driveway; and associated walkways.

3. The Applicants propose to construct: (1) a one-story, an approximately 21' x 38' (802 square-foot) kitchen & family room addition to the rear of the dwelling; (2) an approximately 5' x 8.5' (43 square-foot) porch roof to the rear of the dwelling; (3) an approximately 18' x 26.5' (478 square-foot) second floor office addition above the existing first floor; (4) a patio and walkway adjoining the rear addition and porch; and (5) a generator on the east side of the dwelling

4. The Applicants' proposal is depicted on architectural plans prepared by William Kaufman of Wesketch Architecture, Inc., dated January 3, 2022, last revised August 17, 2022, same consisting of nine (9) sheets; a Plan of Survey prepared by Brunswick West, Inc., dated July 2, 2019 unrevised, same consisting of one (1) page; and a close-up portion of the Plan of Survey depicting partial setbacks, prepared by Brunswick West, Inc., dated June 23, 2022, consisting of one (1) page. The Applicants also submitted a colorized version of the revised architectural plans, prepared by William Kaufman of Wesketch Architecture, Inc., dated January 3, 2022, last revised August 17, 2022, same consisting of nine (9) sheets, entered into the record as 'Exhibit A-1'.

5. The Property is located within the R-1 (3 acre) Residential Zone. The requested variances for the front-yard setback deviations fall within the criteria of N.J.S.A. 40:55D-70(c).

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

7. Matthew Jacobs, one of the Applicants, having an address of 270 Childs Road, Basking Ridge, New Jersey 07920, was duly sworn according to law. Mr. Jacobs testified that he was seeking front-yard setback relief from Childs Road specifically to the proposed additions to the rear of the dwelling and the first story, creating a second-story office. He explained that the Property is an irregularly shaped lot with a pre-existing nonconforming front-yard setback and that the proposed improvements would not encroach any further into the already deficient front-yard setback. Mr. Jacobs testified that the front yard setback would not be exacerbated by the proposed alterations to the home as the alterations would be built upon the existing footprint of the dwelling, only expanding towards the rear of the Property.

8. Mr. Jacobs explained that he was seeking the requested relief because the existing dwelling was not large enough for his growing family. Mr. Jacobs testified that he and his wife, co-applicant Alayne Brady, have 2 young children, had purchased the home several years ago, and that the two welcomed a baby daughter to the world several months prior to the date of the hearing.

9. William Kaufman, architect for the Applicants, having a business address of 1932 Long Hill Road, Millington, New Jersey 07946, appeared to testify on behalf of the Applicants and was duly sworn according to law. The Board found his testimony credible and recognized him as an expert in architecture, being professionally licensed as such and in good standing with the State of New Jersey.

10. Mr. Kaufman testified that he was retained by the Applicants to design the proposed additions and that, as part of the proposal, the Applicants would be adding an addition

to the rear of the Property that would have a setback distance from the secondary front Property line of 96.9 feet. Mr. Kaufman further testified that the Applicant's proposed second story addition would have a setback distance from the secondary Property line of 79.1 feet. Mr. Kaufman also testified that, based upon his experience, the Property's irregular boundaries likely came about due to a prior subdivision, and that the home had likely undergone at least three different addition projects within the past one hundred or so years. Mr. Kaufman further testified that he took the photographs displayed within the submitted architectural plans, sometime in April or May 2022, and that they constitute an accurate depiction of the Property and the existing dwelling and improvements thereon.

11. On questioning by the Board Mr. Kaufman testified that the exterior of the additions would be substantially similar in color, style, and architectural components to the exterior of the balance of the dwelling, and the Applicants stipulated to the same.

12. As to the September 30, 2022 Review Memo of David Schley, A.I.C.P./P.P., the Township/Board Planner, and the September 30, 2022 Review Memo of Thomas J. Quinn, P.E., C.M.E., the Board Engineer, the Applicants stipulated to complying with all of the comments and recommendations set forth therein. Specifically, as to Mr. Quinn's comments, the Applicants acknowledged the potential need for additional stormwater management facilities and recognized that any potential stormwater management plan would be subject to the review and approval of the Township Engineering Department. Mr. Kaufman also stated that the architectural plans' impervious coverage calculation would be revised to include the area of the concrete pads for the proposed generator and air conditioning units, and same remained well under the maximum permitted by Ordinance.

13. Mr. Schley asked the Applicants and Mr. Kaufman whether the shed, since it falls within the required front yard setback, is either a pre-existing non-confirming structure or an illegal non-confirming structure. Mr. Kaufman stated that the shed appears on a survey of the Property from about twenty years ago, but that neither he, nor the Applicants, knew for certain the legality of the shed. Upon suggestion by Mr. Schley, the Applicants stipulated to either proving that the shed was a pre-existing non-confirming structure or, if not, removing the shed from the Property or relocating it at a conforming location thereon.

14. No member of the public questioned either witness, or commented on the application.

DECISION

15. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief under N.J.S.A. 40:55D-70(c)(1).

16. First, with respect to the positive criteria under the “(c)(1)” or “hardship” analysis, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as owners of the Property, due to an extraordinary and exceptional situation uniquely affecting the Property. In this regard, the Board recognizes that the Property is an undersized and irregularly shaped (essentially flag shaped) lot, with multiple front property lines, which render it exceptionally difficult, if not impossible, to locate a dwelling on the shallow flag portion of the Property, without violating either the minimum front-yard, or rear-yard, setback, if not both.

17. The Board further finds that the Applicants have established that no additional land is available for purchase which would bring the Property into, or closer to, conformity with the district standards of the Land Development Ordinance. Finally, the Board finds that the undue hardship was not self-created, as it was not created by the Applicants or any predecessor-in-title.

18. Second, the Board finds that the Applicants have satisfied the negative criteria; that is, they have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the former “substantial detriment” prong, the Board recognizes that the detriments are relatively modest, since, there are no portions of the new construction located closer to the street than the existing dwelling. As to the latter “substantial impairment” prong, the Board recognizes that the Property’s use as a residence is permitted and the deviations proposed do not equate to a re-zoning. In this regard, the Board recognizes the modest size of the proposal, the stipulated conditions, and the lack of any opposition to the application by neighbors/members of the public.

WHEREAS, the Board took action on this application at its meeting on October 5, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 9th day of November, 2022, that the application of **MATTHEW JACOBS and ALAYNE BRADY**, 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, prior to the issuance of a building permit, revise the plot plan to include the area of the generator and air conditioning units' concrete pads within the impervious coverage calculation and the same shall be subject to the review and approval of the Township Engineering Department;
- (3) The colors, architectural style, and materials for the exterior of the proposed additions shall be substantially similar to the balance of the exterior of the existing dwelling;
- (4) The Applicants shall either satisfactorily demonstrate to the Township Zoning Officer that the shed located within the front yard of the Property is a pre-existing non-conforming accessory structure, or remove the shed from the Property or relocate it to a conforming location thereon;
- (5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (6) The 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;
- (7) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution; and
- (8) Soil erosion & sediment control measures shall be provided in accordance with §21-42.11, subject to review and approval by the Township Engineering Department prior to issuance of a construction permit.

ROLL CALL VOTE:

Those in Favor: Baumann, Genirs, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**CLARE D. POWELL
Case No. ZB22-020**

RESOLUTION

WHEREAS, **CLARE D. POWELL** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance in connection with the construction of a one-story, 128 square-foot open porch on the front of the existing dwelling, on property identified as Block 2701, Lot 9 on the Official Tax Map, more commonly known as 112 South Alward Avenue, Basking Ridge (the “Property”):

A variance for a proposed front-yard setback of 96.85 feet to the front porch, whereas the existing front-yard setback is 101.7 feet, and the minimum required front-yard setback in an R-2 (2 Acre) Residential Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on October 5, 2022, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board has reviewed the application and deemed it to be complete.
2. The Property is a slightly narrow lot located in the R-2 Residential Zone with frontage along South Alward Avenue, being in total 240.35 feet wide where 250 feet of width is required. It is presently improved with a single-story, ranch-style, single-family residential dwelling; a driveway; fencing; concrete stoop and stairs attached to the front entrance to the dwelling; slate walkway extending from the driveway to the stoop; and related improvements.

3. The Applicant proposes to remove the existing 3' by 6.5' (approximately 19.5 square feet) front stoop and stairs and replace it with a one-story, 8' by 16' (128 square feet) open porch on the front of the existing dwelling.

4. Approximately one-half of the proposed 16' wide by 8' deep open porch would encroach into the minimum required 100' front yard setback area. Section 21-18B of the Ordinance provides a front yard setback exemption for certain open porches, whereby an open front porch on a pre-existing dwelling constructed prior to 2010 may extend up to 6' into the minimum required front yard, provided, however, that the porch does not exceed 10' in width, 8' in depth, or 10' in height (floor to ceiling). Although the Applicant's proposed porch would only extend approximately 3' into the minimum required front yard setback, it does not meet the exemption criteria because it exceeds 10' in width, being proposed at 16' in width. It would, however, comply with the 10' height limit and the 8' depth limit. Therefore, the porch is subject to the 100' front yard setback requirement, and the proposed 96.85' setback requires a variance. The requested variance for the front-yard setback is governed by the criteria of N.J.S.A. 40:55D-70(c).

5. The Applicant's proposal is depicted on a Variance Application Drawing prepared by Timothy J. Coleman, A.I.A. of Coleman Architecture, dated April 16, 2022, unrevised, same consisting of two (2) sheets. The Applicant also submitted a Survey of the Property prepared by Morgan Engineering and Surveying, dated August 19, 2020, same consisting of one (1) sheet. Also submitted with the application for relief was a set of three photographs depicting the Property as it currently stands.

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

7. Clare D. Powell, the Applicant, having an address of 46 Chestnut Court, Basking Ridge, New Jersey 07920, was duly sworn according to law. She testified that the proposed project, which includes the removal of an existing concrete stoop and construction of a new one-story open front porch, requires variance relief for the proposed encroachment into the front yard setback. Ms. Powell stated that she had recently purchased the Property and that the dwelling thereon was undergoing renovations already approved by the Township. She testified that she had dreamed to one day own a ranch-style home that would boast an inviting front porch. She further stated that she intended for the proposed porch to serve as an improvement to the neighborhood through its aesthetic charm. On questioning, Ms. Powell testified that none of the neighbors to the Property that she had spoken with had expressed concerns to her about the proposed project and they all appeared to be supportive. Additionally, Ms. Powell testified that she had taken the submitted photographs of the Property, that two of those photographs were taken in the early Spring of 2022, that the other was taken in Summer of 2021, and she confirmed that they all accurately depict the Property as it currently exists.

8. Timothy J. Coleman, A.I.A., of Coleman Architecture, having a business address of 16 Highview Avenue, Bernardsville, New Jersey 07924, appearing on behalf of the Applicant, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. Coleman provided a brief description of the existing and proposed conditions, as well as the subject property itself. He opined that the stoop presently on the Property was largely unusable space. Mr. Coleman explained that, although a conforming or exempted porch could be constructed on the front of the house, the excessive width of the proposed porch was necessary to maintain its scale with the rest of the dwelling. As such, he opined that the wider front porch presented a desirable visual environment and provided a better viewscape from

South Alward Avenue. On questioning, Mr. Coleman explained that the goals of the entirety of the renovations to the home were to maintain and repair the original brick façade and to make the home more conducive to Ms. Powell's needs.

9. Ms. Powell stipulated, as a condition of approval, to complying with the comments and requirements set forth in the September 30, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley, and the September 30, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn. Both Mr. Schley and Mr. Quinn confirmed that the questions raised in their review memoranda had been addressed to their satisfaction.

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

DECISION

11. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has satisfied her burden of proving an entitlement to the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

12. As to the positive criteria for a "(c)(2)" or "flexible c" variance relief, the Board finds that the Applicant has satisfied her burden of demonstrating that the purposes of the Municipal Land Use Law ("MLUL") will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. Here, the proposed front porch will improve the appearance of the dwelling as viewed from the street, as well as improve the functionality of the dwelling for the Applicant. As such, the Board finds that the proposal advances the purposes of the MLUL in that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. The Board finds that the benefits of the proposal substantially outweigh the relatively modest

detriment associated therewith, particularly given the stipulated to conditions set forth below. For these reasons, the Board finds that the Applicant has demonstrated the positive criteria required for variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

13. As to the negative criteria for the requested bulk variance, 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 Master Plan and Zoning Ordinance. As to the “substantial detriment” prong of the negative criteria, the Board recognizes that the proposal will improve the appearance of the dwelling. Moreover, the Board notes the modest nature of the proposal and the lack of public opposition, serve to minimize the detriment of the proposal and support its approval, respectively. As to the “substantial impairment” prong of the negative criteria, the Board finds that the proposal clearly does not rise to the level of “spot zoning” and, instead, is consistent with the intent and purpose of the Master Plan and the Zoning Ordinance. As such, the Board finds that the Applicant has satisfied the negative criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(2).

14. In conclusion, the Board finds that the Applicant has satisfied both the positive and negative criteria for the requested bulk variance relief.

WHEREAS, this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 9th day of November, 2022, that the application of **CLARE D. POWELL**, 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, if required;

- (2) The Applicant shall revise the cover sheet of the submitted Variance Application Drawing to replace 'Borough Engineer' with 'Township Engineer';
- (3) The Applicant shall confirm with the Township Engineer that existing Soil Erosion and Sediment measures are in place for the dwelling renovation that will incorporate the proposed porch addition.
- (4) The front porch shall remain an open porch, i.e. covered with a roof but not enclosed on the sides except for columns (and potentially open railings), as depicted on the plans;
- (5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (6) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- (7) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Genirs, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**KAREN VENTRIGLIA
Case No. ZB22-018**

RESOLUTION

WHEREAS, **KAREN VENTRIGLIA** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variances in connection with the construction of a two-story, 3,520 square-foot dwelling with attached two-car garage to replace a dwelling that was destroyed by fire in 2019, on property identified as Block 10401, Lot 33 on the Tax Map, more commonly known as 180 Somerville Road, Basking Ridge, New Jersey 07920 (the “Property”):

- (1) A variance for a pre-existing lot area of 1.26 acres (54,833 square feet), whereas the minimum required lot area in an R-1 (3 acre) Residential Zone is 3 acres, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (2) A variance for a pre-existing improvable lot area of 7,663 square feet, whereas the minimum required improvable lot area in an R-1 (3 acre) Residential Zone is 25,000 square feet, pursuant to Section 21-10.4(b) and Table 401-A of the Land Development Ordinance;
- (3) A variance for a pre-existing lot width of 177.79 feet, whereas the minimum required lot width in an R-1 (3 acre) Residential Zone is 250 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (4) A variance for a side-yard setback (north) of 43.24 feet, whereas the minimum required side-yard setback in an R-1 (3 acre) Residential Zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (5) A variance for a side-yard setback (south) of 23.35 feet, whereas the minimum required side-yard setback in an R-1 (3 acre) Residential Zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;

- (6) A variance for a combined side-yard setback of 66.59 feet, whereas the minimum required combined side-yard setback in an R-1 (3 acre) Residential Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
- (7) A variance for a rear-yard setback of 40.68 feet, whereas the minimum required rear-yard setback in an R-1 (3 acre) Residential Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (8) A variance for a lot coverage of 19.31%, whereas the existing lot coverage is 20.29%, and whereas, the maximum permitted lot coverage in an R-1 (3 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 October 5, 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 pre-existing, rectangular-shaped lot fronting on Somerville Road. The Property is slightly less than one-half the required lot area and is relatively narrow for the zone. In November of 2019, a fire destroyed a two-story dwelling with an attached two-car garage that stood on the Property. Along with the removal of the remnants of the razed dwelling, an above-ground swimming pool and the septic system were also removed from the Property. The Property is, as it presently exists, improved with a 560 sq. ft. detached shed, gravel driveway, and remaining foundation of the destroyed dwelling. The Applicant proposes to construct a 3,520 square-foot, two-story dwelling, with an attached two-car garage to replace the destroyed dwelling.
3. The Applicant's proposal is depicted on engineering plans titled "Zoning and Grading Plan & Soil Erosion Plan" prepared by David E. Fantina, P.E., dated May 14, 2022, last

revised August 12, 2022, same consisting of three (3) sheets and architectural plans prepared by Nicholas J. Ferrara, dated June 13, 2022, same consisting of five (5) sheets. The Applicant also submitted a survey of the Property, titled “Topographic Survey Tax Lot 33, Block 1040”, prepared by John C. Ritt of James P. Deady Surveyor, L.L.C., dated April 2, 2020, last revised July 26, 2022; a Wetlands Delineation & Regulatory Assessment Letter prepared by John Peel, P.P. of PK Environmental, dated August 16, 2022; a series of 11 photographs of the Property taken prior to the fire that destroyed the previous dwelling in 2019; and a series of 6 photographs of the Property taken subsequent to the 2019 fire.

4. The requested variances for the deficient lot area; improvable lot area; lot width; side-yard setbacks (both north and south); combined side-yard setback; and rear-yard setback; and the excessive lot coverage, all are governed by the criteria of N.J.S.A. 40:55D-70(c).

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

6. Frederick B. Zelle, Esq., having a business address of 53 Division Avenue, 1st Floor, Millington, New Jersey 07946, entered his appearance on behalf of the Applicant. Mr. Zelle explained the basis of the application and the nature of the relief sought. He explained that the Applicant’s proposal is to construct a new home in a manner as similar to the previous dwelling as possible, but with modest, modern day improvements. He represented that he took the submitted series of photographs depicting the Property post-fire, and confirmed that they portray an accurate depiction of the Property as it existed at the time of the filing of the Application.

7. Mr. Zelle contended that, except for the setback-related variances, all the requested variance relief was a function of the size of the lot, and that there is no additional usable land available for purchase. Mr. Zelle explained that the Property is surrounded on all sides (not

fronting the street) by a 26-acre wooded parcel owned by the Beacon Hill Homeowners' Association, and that it is preserved as open space. Because the adjacent property is deed restricted as open space, the Applicant, even if she could purchase additional land, would be prevented from building on it.

8. Mr. Zelley conveyed the responses from David E. Fantina, P.E., the engineer enlisted by the Applicant to assist in designing the proposed dwelling, to the September 30, 2022 review letters prepared by the Board Engineer, Mr. Quinn, and the Township/ Board Planner, Mr. Schley.

9. Karen Ventriglia, the Applicant, having an address of 180 Somerville Road, Basking Ridge, was duly sworn according to law. Ms. Ventriglia testified that she and her late husband purchased the Property in 1970. She further testified that she had raised her family and lived there consistently until a fire destroyed the dwelling in November of 2019. Ms. Ventriglia stated that, after three years of living with various relatives and friends, she simply "wanted to go home," "I have to go home." She also stated that she took the submitted photograph series that depict the dwelling on the Property as it existed prior to the 2019 fire, and she confirmed that those photographs accurately depict the Property as it then stood.

10. Ms. Ventriglia further explained that, in the time since the fire, the remnants of the destroyed dwelling had been removed from the Property, except for the foundation, and that the gravel driveway and detached garage/shed still stood upon it. Upon questioning, she stated that she needed the driveway to remain at its current size to allow for sufficient parking on the lot as the Property fronts Somerville Road - a traffic-intensive street with no parking permitted on it. She further clarified that no trees would be removed from the Property in furtherance of the proposed construction.

11. Nicholas J. Ferrara, appearing on behalf of the Applicant, having a business address of 29 Greenwood Road, Millington, New Jersey 07946, was duly sworn according to law, provided his qualifications, was accepted by the Board as an expert in the fields of professional planning and architecture. Mr. Ferrara testified that the Applicant had enlisted his expertise in designing the proposed dwelling and that the intent of his design was to stick to the footprint of the original dwelling as closely as possible, however the proposed dwelling would be slightly wider than the prior one. He stated that the proposed covered deck attached to the rear of the dwelling would be unenclosed. Mr. Ferrara also explained that there would be a net reduction in impervious coverage on the lot in the amount of 536 square feet (0.98%) as compared to the conditions existing prior to the 2019 fire, arising from the removal of pre-existing pool, driveway, patio, and walkway, in spite of a modest increase in the total square feet of the dwelling.

12. On questioning by the Board, Mr. Ferrara explained that the discrepancies between the measurements of the previous dwelling's setback distances and those of the proposed dwelling, as apparent in the application, arose because the prior measurements were deficient and that those detailed in the new proposal are accurate. Mr. Ferrara also explained that the Property once hosted an above-ground pool in the backyard but that it has since been removed from the Property and that the Applicant has no plans to re-introduce a pool of any kind to the Property.

13. David Schley, P.P., A.I.C.P., the Township/ Board Planner, and Thomas J. Quinn, P.E., C.M.E., the Board Engineer, stated that their comments and concerns were adequately addressed by the provided testimony and would be satisfied by appropriate stipulations.

14. Todd Edelstein, having an address of 172 Riverside Drive, Basking Ridge, New Jersey 07920, as a member of the public, spoke in support of the application.

15. No other member of the public commented on the application.

DECISION

16. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has satisfied her burden of proving an entitlement to the requested variance relief for the deficient lot area, lot width and, improvable lot area under N.J.S.A. 40:55D-70c(1), and the deficient, front-, side-, combined side-, and rear-yard setbacks, and the excessive lot coverage, under both N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

The c(1) Positive Criteria:

17. As to the positive criteria for “(c)(1)” or “undue hardship” variance relief for all of the deviations, the Board finds that the Applicant has satisfied her burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, her as owner of the Property, as a result of unique conditions relating to the Property. The Property is (1) significantly undersized and narrow for the zone district; (2) given the setback requirements contains a uniquely and exceedingly small building envelope; and (3) is limited by its location surrounded by deed-restricted land. As such, the deficient lot area, improvable lot area and lot width are preexisting conditions of the lot, and the deficient setbacks and excessive lot coverage all are products of the significantly undersized nature of the Property.

18. The Board considers that the Property is a 177.79-foot-wide by 310.33-foot-deep parcel, which totals 54,833 square feet (1.26 acres). Based on Township records, several different zoning designations have applied to the Applicant’s Property since the Township’s first zoning ordinance was enacted in 1937. Since 1954, the minimum required lot area has been either two acres or three acres. The Applicant indicates a dwelling was constructed after purchasing the 1.26-acre Property in 1970 which was destroyed by fire in 2019. Improvable lot area requirements were

established in 2006, with the purpose of ensuring that adequate area suitable for development, i.e. free of environmental or other constraints, is provided within the building envelope on each lot. A minimum improvable lot area of 25,000sf is required in the R-1 Zone. The Applicant's building envelope is free of constraints; however, it contains only 7,663sf.

19. The Board recognizes that the Applicant's 54,833 square-foot lot is less than one-half of the area of a conforming lot in the R-1 (3 Acre) Zone. The Applicant's pre-existing nonconforming lot coverage of 20.29% exceeds the maximum permitted lot coverage by 2,900 square feet (5.29%). The proposed dwelling footprint is modestly larger than the prior dwelling footprint, however, the removal of the pre-existing pool and reductions in driveway and patio/walkway surfaces result in a proposed net reduction in coverage of 536 square feet (0.98%). The total proposed coverage of 19.31% exceeds the maximum permitted coverage by 2,364sf (4.31%). However, by comparison, the Applicant's lot coverage would be a conforming 8.1% if all of the coverage was located on a conforming 3-acre lot. The Board further recognizes that the Applicant is unable to purchase any additional usable land adjacent to the Property.

20. The Board further recognizes that, since 1997, the only land adjoining the Applicant's lot to either side and to the rear has been a 26-acre wooded parcel owned by Beacon Hill Homeowners Association. This land was preserved as open space in conjunction with the residential cluster development to the northwest. Therefore, it is not possible for the Applicant to purchase any adjoining land to make the applicant's lot more conforming in area, improvable area, or width. As such, the Board finds that the Applicant has established that no additional land is available for purchase which would bring the Property into, or significantly closer to, conformity with the district standards of the Ordinance. The Board further finds that the hardships associated with the strict application of the zoning requirements were not self-created by the Applicant or any

predecessor-in-title. Accordingly, the Board finds that the Applicant has satisfied the positive criteria for (c)(1) or undue hardship variance relief for all of the requested variance relief.

The c(2) Positive Criteria:

21. As to the positive criteria for “(c) (2)” or “flexible c” variance relief, the Board finds that the proposed development will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. These benefits include providing a desirable visual environment, providing adequate light, air and open space, upgrading the housing stock, promoting the general welfare, and enhancing the visual compatibility of the Property with adjoining properties. In this regard, the Board recognizes that the proposed dwelling, as compared to the existing mostly-vacant lot, will improve the appearance of the Property, provide aesthetic and property value benefits to the neighborhood, and otherwise improve the housing stock in the community.

22. The Board further finds that these benefits to be derived from the proposed development will substantially outweigh the relatively modest detriments associated with the variance relief sought, particularly given the conditions stipulated to by the Applicant below.

23. Based upon the forgoing, the Board finds that the Applicant has also satisfied the positive criteria for c(2) variance relief for all of the requested zoning deviations.

The Negative Criteria:

24. Finally, the Board finds that the Applicant has satisfied the negative criteria for all of the requisite variance relief. 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.

25. The Board considers, as to the “substantial detriment” prong of the negative criteria, that the detrimental impact is mitigated by the location of the Property surrounded by preserved

open space, a net reduction in impervious coverage, and the conditions stipulated to by the Applicant and set forth below. The Board further considers, in this regard, the lack of any public opposition to the proposal. As to the “substantial impairment” prong, the Board recognizes that the residential use is permitted in the R-1 Zone, and the reconstruction of the fire destroyed dwelling certainly does not constitute “spot zoning” on the Property.

WHEREAS, the Board took action on this application at its meeting on October 5, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 9th day of November, 2022, that the application of **KAREN VENTRIGLIA** 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. The engineering plan shall be revised to be consistent with the architectural plans with regard to the proposed deck, a portion of which is proposed to be covered, and the lot coverage calculations shall be revised accordingly. With the exception of the covered portion, the balance of the proposed deck improvement shall remain open, i.e. not enclosed by walls, roof or otherwise, except for open railings;
3. All wetlands and wetlands transition areas on the Property shall be contained within a wetlands conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney and must be executed by the applicant and recorded with the Somerset County Clerk prior to issuance of a construction permit. The easement boundary shall be delineated with Township standard markers, which must be bonded prior to issuance of a construction permit and installed prior to issuance of a certificate of occupancy;
4. The Applicant shall resolve the discrepancy between the street right-of-way shown on the Township tax maps and the right-of-way shown on the submitted survey and plans, to the satisfaction of the Township Engineer. In the event a dedication of additional right-of-way is required to achieve the right-of-way shown on the tax maps, the Applicant shall provide the appropriate dedication to the Township.

Such shall be prepared by the Township Attorney and executed by the Applicant and recorded with the Somerset County Clerk, prior to issuance of a construction permit;

5. In the event a right-of-way dedication is required to satisfy the above condition, resulting in a reduced lot area, the total lot coverage on the Property shall not exceed 10,588 square feet, which is 19.31% of the existing, pre-dedication lot area;
6. All utility service lines between the dwelling and the existing on-site utility pole must be underground and routed to minimize disturbance to existing trees. Utility meters shall not be located in the front yard;
7. The applicant shall submit a completed Township standard lot coverage disclosure form prior to issuance of a construction permit;
8. A tree protection, removal, and replacement plan, as applicable, shall be submitted for the review and approval by the Township Engineering Department prior to any land disturbance;
9. The septic design plan approved by the Township Health Department shall be submitted to the Township Engineering Department prior to the issuance of a building permit.
10. The submitted plans shall be revised with shading to clarify the areas of the Property whereupon portions of the existing driveway are to be removed, to the satisfaction of the Township Engineer. All driveway that encroaches on the adjoining property to the north and all driveway within 5 feet of the north side property line shall be removed;
11. The submitted plans shall be revised to correct the “50’ RY” label placed upon the northerly side yard, to the satisfaction of the Township Engineer.
12. The Applicant shall, if required by the Township Engineer, provide details for the proposed retaining wall, and/ or obtain a post-construction certification by the design engineer as part of the construction permit process.
13. The submitted plans shall be revised to indicate whether the existing well is to be maintained or replaced;
14. The architectural plan shall be revised to specify that the deck floor will have gaps between boards rather than “tongue in groove” boards, such that it will be pervious.
15. The Applicant shall pay to the Township a development fee, required in accordance with Section 21-86;

16. The project is subject to approval by the Somerset-Union Soil Conservation District;
17. 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;
18. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
19. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Genirs, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**LEONARD and ALEXIS SOLED
Case No. ZB22-017**

RESOLUTION

WHEREAS, **LEONARD and ALEXIS SOLED** (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 18.5’ by 38’ (703 square-foot) inground swimming pool, located in one of the two front yards of the dwelling, and related fencing to be located on property identified as Block 7702, Lot 10.01 on the Tax Map, more commonly known as 6 Fenwick Place, (the “Property”):

1. A variance to locate an inground swimming pool in the Valley Road front yard of the Property, in violation of Section 21-18.2.a of the Land Development Ordinance which restricts the location of swimming pools to either the side- or rear-yards of a property;
2. 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;
3. A variance to construct a 6-foot-high fence in the Valley Road front yard, whereas the maximum permitted height for a fence located in any front yard is 4 feet, pursuant to Section 21-16.2(a) of the Land Development Ordinance; and
4. A variance to construct a fence in the Valley Road front yard that is less than 50% open, whereas fences located in a front yard shall be constructed such that at least 50% thereof is open, pursuant to Section 21-16.2(a) of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on October 5, 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 one of five (5) single-family lots presently under construction on Fenwick Place, which is a new cul-de-sac off Valley Road being developed in accordance with subdivision approvals granted by the Township Planning Board in 2016 and 2018. The Property is an irregularly shaped and oversized (4 acres in a 1-acre zone) corner lot, having front yards along both Fenwick Place (the “primary” front yard) and Valley Road (the “secondary” front yard). The lot is occupied by the Applicants’ dwelling at the north end (furthest from Valley Road), a detention basin at the south end (closest to Valley Road), and more than 550’ of wooded/wetland conservation easement in between the dwelling and the basin /Valley Road.
3. The Applicants propose the construction of a 18.5’ x 38’ (703 square-foot) inground swimming pool and a 6’ high fence in the Valley Road front yard of the lot. The lot is presently under construction with the goal of completing an already-approved single-family, two-story dwelling.
4. The proposed pool would be located in the Valley Road front yard and as such requires a variance from §21-18.2.a which restricts the location of swimming pools to either the rear- or side-yards of a property.
5. The Applicants have applied for a variance from §21-18.1, which states “[a] pool shall be located behind the rear building line of existing residential structures on adjoining lots” as a precautionary measure because a dwelling will likely be constructed on the presently vacant, adjacent lot (identified as Block 7702, Lot 10.02) to the north. The Applicants’ proposed pool would not be behind the rear building line of this adjacent lot at present but may be when such property is developed.
6. The proposed fencing requires a variance from Section 21-16.2(a) of the Land Development Ordinance which restricts the maximum height of a front-yard fence to 4 feet. The

Applicants propose a 6-foot-high fence in the Valley Road front yard.

7. The proposed fencing also requires an additional variance from Section 21-16.2(a) of the Land Development Ordinance which requires a front-yard fence to be at least 50% open. Applicants propose a fencing style that is less than 50% open.

8. The pool location and fence height and openness variances are governed by the criteria of N.J.S.A. 40:55D-70(c).

9. The Applicants' proposal is depicted on a Foundation Location Plan, dated August 13, 2021, same consisting of one (1) page, and engineering plans, dated March 26, 2021, most recently revised on May 18, 2022, same consisting of two (2) pages, both prepared by W. Leland Titus, P.E. of Titus Surveying & Engineering, P.C. and submitted with the Applicants' application. Also submitted for the Board's review were a series of ten (10) photographs that appear to depict the Property and surrounding lots under construction, and a single photograph of a section of fencing that exemplifies the style of fencing the Applicants seek to utilize.

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

11. Frederick B. Zelle, Esq., having a business address of 53 Division Avenue, 1st Floor, Millington, New Jersey 07946, appeared on behalf of the Applicants and provided an overview of the project, including the history of the lot's creation through subdivision and the Applicants' objectives in installing the pool and the fence in the proposed locations. He represented that he took the submitted series of photographs depicting the Property and confirmed that they portray an accurate depiction of the Property as it existed at the time of the filing of the Application.

12. W. Leland Titus, P.E., of Titus Surveying & Engineering, P.C., having a business

address of 618 Somerset Street, North Plainfield, New Jersey 07060, was duly sworn, provided his qualifications, and was accepted by the Board as an expert in professional planning and engineering. Mr. Titus described the existing and proposed conditions on the Property, including the more than 550 foot-long conservation easement and detention basin that encumbers the southern portion of the site and the a 25-foot tree preservation and buffer easement located in the rear-yard.

13. Mr. Titus addressed the comments set forth in the September 30, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley. He also addressed the comments set forth in the September 30, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn.

14. Mr. Titus addressed the adequacy of the existing and proposed screening between the proposed pool and the future dwelling on adjacent Lot 10.02, recognizing that same will be approximately 240 feet away. He also testified that the Applicants' dwelling partially obscures the views of the pool area, and same will be further screened by fencing and landscaping.

15. Leonard Soled, the Applicant, residing at 18 Skyline Drive, Warren, New Jersey 07059, was duly sworn according to law.

16. Mr. Soled testified that he and his wife had recently purchased the Property and were seeking variance relief from the Board in connection with the construction of a proposed pool and fencing. Mr. Soled stated that the proposed pool's location was chosen to maximize visual aesthetic appeal and privacy.

17. Mr. Soled also stipulated, as a condition of approval, to complying with the comments and recommendations contained in the September 30, 2022, Review Memorandum prepared by the Board Planner, Mr. Schley and the September, 30 2022 Review Letter prepared by the Board Engineer, Mr. Quinn. On questioning, Mr. Soled explained that he planned to use

landscaping buffers to surround the proposed fencing. He further stipulated to implementing a staggered landscaping design whereby evergreen trees and bushes would be utilized and alternated between.

18. Mr. Soled testified that he took the single photograph of a section of fencing marked as an exhibit at the hearing and that it accurately depicts the style of fence that he wishes to utilize for the section of fence closest to and parallel to Fenwick Place. For the balance of the fencing, he proposes to utilize commonly used decorative black pool fencing, which would be well over 50% open, thus requiring variance relief only for the 6 foot height.

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

DECISION

20. After reviewing the evidence submitted, the Board, by a vote of 5 to 1, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the proposed pool location and fence height/openness under both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

The Subsection "c(1)" Positive Criteria:

21. As to the positive criteria for the "c(1)" or "hardship" variance relief for the requested pool location deviations, the Board finds that, by reason of 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 nature of the Property as a corner lot containing two front-yards, the substantially long easement along the rear of the Applicants' Property, and the conservation easement and basin encumbering the southern portion of the Property.

22. 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 because if the Property did not extend to Valley Road, it would contain only one front yard and so the proposed pool location would not require a variance from the side- or rear- yard requirement for its location. Further, as it relates to compliance with §21-18.1, (which states “[a] pool shall be located behind the rear building line of existing residential structures on adjoining lots”), this 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.

23. As to the positive criteria for the “c(1)” or “hardship” variance relief for the requested fence height and openness deviations, the Board finds that, by reason of exceptional 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 nature of the Property as a corner lot containing two front-yards serves as an exceptionally unique physical feature affecting the Property.

24. The Board recognizes that the legislative intent underlying the fence height and openness provisions of the Land Development Ordinance was to foster inviting and aesthetically pleasing environment by encouraging increased visibility of passersby to homes within the Township. The Board concludes that requiring the Applicants to comply with the these requirements would not serve the intent of the ordinance because of the relatively vast distance and volume of natural buffers between Valley Road and the proposed fence location.

25. The Board finds that the hardship that would result from the strict application of the zoning ordinance provision would not be by virtue of a condition that was “self-created” by the Applicants or any predecessor-in-title. Therefore, the Board finds that the Applicants have demonstrated the positive criteria for the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

The Subsection “c(2)” Positive Criteria:

26. As to the positive criteria for “c(2)” or “flexible c” variance relief for the pool location deviations, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that the proposed pool location will be screened by the dwelling itself, the proposed fencing, as well as already planned and stipulated to landscaping. The Board further recognizes that locating the proposed pool in a fully conforming location, would locate the pool much closer to the dwelling on northerly adjacent Lot 10.02 and the dwelling upon the three adjacent lots to the rear of the Property (Lots 21, 22, and 23), thus restricting the Applicant’s privacy. As such, the Board further 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 related to the pool location, pursuant to N.J.S.A. 40:55D-70(c)(2).

28. As to the positive criteria for “c(2)” or “flexible c” variance relief for the fence height and openness, 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 further finds that the Applicants have demonstrated that the proposed fences will promote safety and the general welfare, provide adequate light, air and open space, and promote a desirable visual environment. In this regard, the Board recognizes that the intent of the fence height and construction ordinance is to avoid massing and to preserve the character of the neighborhood. Here, the proposed fences do not extend around the entirety of the Property and do not obscure the views of the Property, with the exception of the proposed pool area. As such, the Board finds that the Applicants have demonstrated that the benefits of the proposal, particularly the improved aesthetics of the Property, substantially outweigh the modest detriment associated therewith.

The Subsection “c(1)” and “c(2)” Negative Criteria:

27. As to the negative criteria required for variance relief pursuant to subsections c(1) and c(2), the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

28. As to the substantial detriment prong of the negative criteria, related to the pool location, 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 proposed and stipulated 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.

29. 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.

30. As to the negative criteria related to the fence height and openness, 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. As to the substantial detriment prong, the Board finds that the proposed fences will be consistent with the being-constructed dwelling, as well as the overall neighborhood. In this regard, the Board recognizes that no member of the public objected to the Applicants' proposal. As to the substantial impairment prong, the Board recognizes that the proposed fence is not inconsistent with the zone plan or zoning ordinances as front-yard fences are permitted. Moreover, the Board finds that granting the requested variance relief does not rise to the level of constituting a rezoning of the Property.

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

WHEREAS, the Board took action on this application at its meeting on October 5, 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 9th day of November, 2022, that the application of **LEONARD and ALEXIS SOLED**, 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) 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 review and approval by the Township Engineering Department prior to any land disturbance.
- (3) The Applicants shall utilize "best management practices" when discharging pool water.
- (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) No hardscape shall be permitted surrounding the pool.
- (6) The Applicants shall revise the plans to specify that the section of fence closest to and parallel to Fenwick Place shall be the style of fence shown in the submitted photograph (6 feet high, less than 50% open), and the balance of the fencing shall be decorative black pool fencing (6 feet high, more than 50% open). All of the fencing shall be pool code compliant;
- (7) The portions of proposed fence visible from Fenwick Place shall be softened by a staggered/informal vertical landscape buffer consisting of evergreen trees and bushes with minimum planting heights of 6 feet and 3 feet, respectively;
- (8) No existing trees shall be removed from the Property in connection with the pool and fencing. Tree protection shall be provided along the conservation easement boundary, to the satisfaction of the Township Engineering Department, prior to any land disturbance.
- (9) The pool's elevation shall be lowered by a number of feet between 1.5' and 2.0', to minimize the slope and minimize/eliminate the need for retaining walls between the pool and the conservation easement, and the submitted plans shall be revised to reflect such change, to the satisfaction of the Township Engineering Department;

- (10) The Applicants shall confirm, to the satisfaction of the Township Engineering Department, that the soil erosion and sediment control plans presently in place for the Fenwick Place subdivision incorporate the area of the proposed pool;
- (11) 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;
- (12) 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
- (13) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, Genirs, Pochtar

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 November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**ZHIGANG ZHANG and HUIJIE ZHAO
Case No. ZB22-023**

RESOLUTION

WHEREAS, ZHIGANG ZHANG and HUIJIE ZHAO (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variances in connection with (1) the storage of a 10’ high, 7.5’ by 22’ recreational vehicle trailer (RV) in the westerly (Keats Road) front yard, (2) the presence of an existing 20’ high, 16’ by 36’ (576 square-foot) shed, to the rear of the dwelling and partially within the westerly (Keats Road) front yard, (3) the presence of an 8’ high, 9.5’ by 26’ (247 square-foot) trellis attached to the east side/rear corner of the dwelling within a required setback; and (4) the distance between the aforementioned shed and a 9’ high, 10’ by 28’ (280 square-foot) detached trellis in the rear yard, on property identified as Block 6207, Lot 5 on the Tax Map, more commonly known as 125 Highland Avenue, Basking Ridge, New Jersey, (“the Property”):

- (1) A variance for the storage of a recreational vehicle trailer (RV) in the westerly (Keats Road) front yard, whereas recreational vehicles must be stored in a side-yard, rear-yard, or garage, pursuant to §21-19.2 of the Land Development Ordinance;
- (2) A variance for the location of an existing, 20’ high, 16’ x 36’ (576 square-foot), accessory (shed) structure, partially within the westerly (Keats Road) front yard, whereas such structures are restricted to a side- and/ or rear-yard, pursuant to Section 21-16.1.b of the Land Development Ordinance;
- (3) A variance for a proposed side-yard (east) setback distance of 15 feet, from an existing, 8’ high, 9.5’ by 26’ (247 square-foot) accessory trellis structure attached to the eastern rear corner of the dwelling on the Property, whereas a 30 foot minimum setback is required, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

- (4) A variance for a proposed distance between buildings of 5 feet between a 9' high, 10' x 28' (280 square-foot) detached accessory trellis structure and an existing, 20' high, 16' x 36' (576 square-foot), accessory shed structure, whereas a minimum distance between buildings of 10 feet is required, 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 October 13, 2022 at which time interested citizens were afforded an opportunity to be heard; and

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

1. The Board reviewed the application and deemed it complete.
2. The Property is an approximately 1.05-acre corner lot, having two front yards along Highland Avenue (primary front yard) and Keats Road (secondary front yard), improved with a single-family dwelling, two accessory shed structures, a detached trellis structure, an attached trellis, a driveway and associated walkways, located within the R-6 (3/4-acre) Residential Zone.
3. The Property is presently host to a number of zoning violations which are the subject of this application: the storage of a recreational vehicle trailer (RV) in the westerly (Keats Road) front yard; the encroachment of a portion of an accessory shed structure into the westerly (Keats Road) front-yard, a non-conforming easterly side-yard setback distance of 15' resulting from the presence of a trellis attached to the dwelling's eastern, rear corner; and a non-conforming 5' distance between the larger of the two sheds and the detached trellis (both accessory structures).
4. The Applicant's proposal is depicted on a marked-up Plan of Survey, prepared by Richard S. Zinn, of Brunswick West, Inc., dated July 6, 2022, consisting of one (1) sheet. Also

submitted with the application were an unmarked version of the same Plan of Survey, prepared by Richard S. Zinn, of Brunswick West, Inc., dated July 6, 2022, consisting of one (1) sheet, and a series of ten (10) photographs apparently depicting the Property from various angles.

5. The requested variances for the location, height, and setbacks for the accessory buildings and structures all fall within the criteria of N.J.S.A. 40:55D-70(c).

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

7. On questioning, Mr. Schley opined that the purpose behind the “minimum distance between buildings” provisions of the Ordinance is to promote visual aesthetics in the Township by promoting openness and visibility between structures.

8. Also on questioning, Mr. Schley testified to the presence of the non-conforming accessory shed. He explained that the Applicants had obtained a construction permit for the shed, based on a plan that showed it to be in the rear-yard, and a Certificate of Occupancy was issued without the benefit of an as-built survey, in 2019. Mr. Schley further explained that the submitted July 6, 2022 survey shows approximately one-third of the shed encroaching into the Keats Road “secondary” front-yard; the southwesterly corner of the shed is 123’ from the Keats Road right-of-way, whereas a setback of 132’ is necessary for the shed’s footprint to avoid the front-yard setback deviation.

9. Zhigang Zhang and Huijie Zhao, the Applicants, having a residential address of 125 Highland Avenue, Basking Ridge, New Jersey, were duly sworn according to law. Mr. Zhang confirmed that he took the series of ten (10) photographs that were submitted with the application and that they accurately depict the Property as it presently exists.

10. Mr. Zhang testified generally regarding the present conditions on the Property and the requested relief. Mr. Zhang testified that a 64 square-foot section of patio had been recently removed from the Property and he demonstrated such via a photograph depicting the patio's remnants that was submitted into evidence, confirmed by Mr. Zhang to be an accurate depiction, and marked as Exhibit A-1. He also testified that the trellises were being utilized as a garden where the family grows various vegetables. Mr. Zhang also explained that he and his wife, co-applicant, Huijie Zhao, had purchased the recreational vehicle during the Covid-19 pandemic in order to take their kids on safer vacations. Mr. Zhang testified that he and his wife had recently planted about one half-dozen fruit trees and arborvitaes around the RV's position upon the driveway to create screening, and they planned to plant additional trees along the Property's perimeter as a means to provide sufficient screening of same. On this point, Mr. Zhang submitted into evidence, and confirmed the accuracy of a photograph of the saplings, marked as Exhibit A-2, and a photograph of the co-applicant, Ms. Zhao, standing next to one of the aforementioned arborvitaes for purposes of demonstrating scale, marked as Exhibit A-3. He further testified that none of his neighbors had expressed concerns to him about the proposal.

11. On questioning, Mr. Zhang testified that the RV was used mainly by his family for purposes of recreation, but he also clarified that he regularly rents it out to others to use offsite. Mr. Schley advised Mr. Zhang that such activities constituted the operation of a business upon the Property. Accordingly, Mr. Zhang stipulated, as a condition of approval, to discontinuing such activities. Regarding questions about the use of the non-conforming shed, Mr. Zhang testified that the company he purchased the shed from had made a mistake when installing it, and that the shed is provided with electricity, but not plumbing or air conditioning, hosts a workshop on the ground

level and recreational room on the second level, and that nobody lives, or has lived, there. When questioned about the number of vehicles regularly parked in the driveway, Mr. Zhang testified that, in addition to the RV, and his and his wife's respective cars, also present was a friend's unregistered and unlicensed vehicle. Mr. Zhang elaborated that his friend was travelling overseas and that he agreed to allow the friend's car to be stored on the Property until he returned. The Board informed Mr. Zhang that, per Township Ordinance, uninsured and unlicensed vehicles must be garaged; Mr. Zhang stated that he was unaware of this requirement and agreed to comply.

12. The Applicants stipulated to ceasing any and all rental activities of the RV on the Property, agreeing to never allow any individual to reside in either the RV or the two-story shed, and further stipulated to allowing a Landscaping Subcommittee, comprised of Board members, to make the ultimate determination on the type of screening needed for the RV storage area.

13. Austin W. Colotti, having a residential address of 4 Keats Road, Basking Ridge, New Jersey, an interested neighbor and member of the public, was duly sworn and testified that, although he had received the proper notice of the hearing, he had not spoken with either of the Applicants about his concerns with the application. Mr. Colotti further testified that he (and other neighbors) had discovered rental listings online for the RV, and that he can clearly see the RV from the end of his driveway, and he expressed concerns about the sufficiency of the landscape screening of same. Mr. Colotti also expressed opposition to the Applicants' request for relief as it pertains to the RV.

14. Rita P. Dalal, having a residential address of 138 Highland Avenue, Basking Ridge, New Jersey, an interested neighbor and member of the public, was duly sworn. She asked Mr. Zhang whether he goes by the name of "Jackson"; Mr. Zhang responded in the affirmative. Ms.

Dalal testified that she had on prior occasions witnessed a Caucasian male in a towel walking around the Property, seemingly after exiting the non-conforming shed, and she too expressed opposition to the Applicants' request for relief as it pertains to the RV.

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

DECISION

16. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concluded that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief under both N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2). Relief under N.J.S.A. 40:55D-70(c)(1) is granted only for the storage of the RV in the secondary (Keats) front yard, while relief under N.J.S.A. 40:55D-70(c)(2) is granted for all of the requested relief, including the storage of the RV, the location of the accessory two-story shed in the secondary (Keats) front yard, the presence of the attached accessory trellis in the easterly side yard, and the insufficient distance between the detached accessory trellis structure and the two-story accessory shed.

The “(c)(1)” / “Hardship” Positive Criteria:

17. First, under the “(c)(1)” or “hardship” criteria, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the subject property, as it relates to the relief sought for the storage of the RV. The Property is a corner lot and therefore has two (2) front yards. There is no area of the driveway that is not situated in either of the 2 front yards, thus rendering the parking of any trailer or recreational vehicle on any portion thereof impermissible under the zoning ordinance. The Board accepts the

Applicant's contention that strict compliance with Section 21-19.2 of the Land Development Ordinance would require the storage of the recreational trailer in an overly cumbersome and impractical position, thus resulting in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the Applicants as owners of the Property. The hardship that would be granted by the strict imposition of the RV location requirement would not be self-created by the Applicants or any predecessor-in-title.

The “(c)(2)”/ “Flexible ‘c’” Positive Criteria:

18. Second, with respect to the positive criteria for “c(2)” or “flexible c” variance relief as to all of the requested deviations from the Ordinance, 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 all of the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The improvements at issue provide, or will provide, a desirable visual environment, enhance the visual compatibility of the Property with adjoining properties, and otherwise promote the general welfare. The Board finds that the existing trellises and two-story shed provide enhancement to the Property and neighborhood and that the evidence indicated that sufficient landscape screening surrounding the RV (as determined by the Board's Landscaping Subcommittee) would provide adequate privacy to both the Applicants and their neighbors. To this end, the Board notes that the opposition expressed by the neighbors was limited to the relief sought pertaining to the RV, and not to the location of the shed or the trellises. However, the Board finds that ample landscape screening, as will be determined by the Board's Landscaping Subcommittee, can sufficiently alleviate those concerns. By contrast to these substantial benefits, the Board finds that the detriments associated

with the proposed development will be relatively modest, and they will be alleviated by the conditions stipulated to by the Applicants as set forth below, including the landscape buffering around the end of the driveway and along Keats Road, such that the benefits will substantially outweigh the detriments of the deviations as a whole.

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

19. The Board finds that the Applicants have satisfied the negative criteria under both N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2). As to the “substantial detriment” prong of the negative criteria, with the exception of the proposed RV storage location, there is virtually no evidence that the requested deviations will have a significant negative impact on surrounding property owners, and such impact of the RV’s location can be sufficiently addressed by the stipulated-to conditions set forth below. As to the “substantial impairment” prong of the negative criteria, the Board further finds that the requested relief does not amount to a rezoning of the Property as shed and trellis accessory structures, along with the storage of RV trailers, are permitted in the R-6 (3/4 Acre) Zone and the requested deviations from the ordinance are relatively modest. Thus, 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.

WHEREAS, the Board took action on this application at its meeting on October 13, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Bernards, on the 9th day of November, 2022, that the application of **ZHIGANG**

ZHANG and HUIJIE ZHAO, 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) The submitted marked-up Plan of Survey shall be revised to identify the specific area upon the Property where the 64 square-feet of existing block patio was removed;
- (3) The Applicants shall provide additional landscaping to screen the RV from the adjoining properties and streets to the satisfaction of the Board's Landscaping Committee, which shall be comprised of no more than three (3) members of the Board. The Applicants shall permit the Landscaping Committee to conduct an evaluation of the existing landscaping and a subsequent evaluation once all of the landscaping is installed, and the Applicants shall provide additional plantings and/or make other changes to the landscaping as deemed necessary and appropriate by the Landscaping Committee to ensure that screening of the RV is sufficient. In the event that the Applicants disagree with the determinations of the Landscaping Committee as to the adequacy of the screening, the Applicants' only recourse shall be to promptly appeal the Landscaping Committee's determination to the Board for a final determination, all in accordance with the Board's Rules and Regulations;
- (4) The Applicants shall maintain the RV screening, as approved by the Board's Landscaping Committee, for as long as the RV exists on the Property;
- (5) The RV shall be stored only upon the stone portion of driveway near the two-story shed, as shown in the submitted photographs, and the submitted marked-up Plan of Survey shall be revised to clearly identify this approved location;
- (6) The Applicants shall not rent-out the RV from the Property;
- (7) No one shall be permitted to reside within the two-story shed, or the RV while it is stored on the Property, at any time;
- (8) The Applicants shall obtain all necessary zoning and/or construction permits for any and all improvements already constructed or under construction upon the Property, including for work that did not require Board approval;
- (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 aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules, regulations and 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: Baumann, Genirs, Pavlosky, Pochtar, Tancredi

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**BRYAN & JESSICA CAMPBELL
Case No. ZB22-024**

RESOLUTION

WHEREAS, **BRYAN & JESSICA CAMPBELL** (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, a 17’ by 24’ (408 square-foot) open deck (replacing an existing 297 square-foot patio), a fire pit, 1,647 square-feet of patio and walkway improvements, and the continuation of an unpermitted, non-conforming 8’ by 12’ (96 square-foot) shed, to be located in the rear-yard and side-yards of the property identified as Block 1806, Lot 9 on the Tax Map, more commonly known as 34 Spencer Road, (the “Property”):

1. A variance for a proposed lot coverage of 26.53%, whereas the existing lot coverage is 17.55% 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 an existing accessory (shed) side-yard setback of 7.3’, whereas the minimum required accessory side-yard setback in the R-7 (1/2 Acre) Residential Zone is 10’, 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 October 13, 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 narrow, 0.57-acre, single-family lot in the R-7 (1/2) Residential Zone, with a width of 100' where 125' is required. The lot fronts on Spencer Road, is adjacent to separate single-family lots on each side, and is flanked to the rear by a railroad. The Property has been improved with a renovated single-family dwelling, front-yard driveway, front-yard paver walkway, a rear-yard 297 square-foot patio, and an unpermitted and non-conforming 8' by 12' (96 square-foot) shed in the southern side-yard.

3. The Applicants propose the construction of an 18' x 36' (648 square-foot) inground swimming pool, a 17' by 24' (408 square-foot) open deck to replace an existing 297 square-foot patio, fire pit, and 1,647 square-feet of patio and walkway improvements. The Applicants also seek relief to allow for the existence of the unpermitted, non-conforming 8' by 12' (96 square-foot) shed located in the southern side-yard of the Property.

4. The proposed pool, open deck, patio, and fire pit would be located in the rear-yard and the proposed walkway would extend from the rear-yard, wrap around the dwelling through the southern side-yard, and ultimately connect with the existing driveway.

5. The Property has an existing impervious coverage total of 4,377 square-feet (or 17.55%). The sum-total impervious coverage of the to-be-removed, proposed, and existing improvements would be 6,615 square-feet (or 26.53%), a net increase of 2,238 square-feet (or 8.97%), thus requiring a variance from Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance which would otherwise effectively limit the Property's impervious coverage to 4,987 square-feet (or 20%).

6. The existing accessory shed presents a side-yard setback of 7.3', whereas the minimum required accessory side-yard setback in the R-7 (1/2 Acre) Residential Zone is 10', pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance, and thus

requires a variance as well.

7. The impervious coverage and side-yard setback variances are governed by the criteria of N.J.S.A. 40:55D-70(c).

8. The Applicants' proposal is depicted on a Pool Location and Grading Plan, prepared by Daniel J. Egarian, P.E., of DJ Egarian & Associates, Inc., dated July 14, 2021, last revised August 1, 2022. Also submitted with the application were: a survey of the Property, prepared by Daniel E. Parker, of Parker Engineering & Surveying, P.C., dated February 12, 2017; a series of twenty-two (22) photographs that apparently depict the Property from various angles; and a series of four (4) computer-rendered images apparently depicting the proposal once completed.

9. The Board also received in connection with this application a letter from Frederick B. Zelly, Esq., attorney for the Applicants, dated September 14, 2022, responding to concerns raised in Board/ Township Planner David Schley's September 7, 2022 completeness review memorandum which stated that a pergola structure depicted in the computer-rendered images had been removed from the proposed project.

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

11. Frederick B. Zelly, Esq., having a business address of 53 Division Avenue, 1st Floor, Millington, New Jersey, entered his appearance on behalf of the Applicants and provided an overview of the project. Mr. Zelly also confirmed that he took the provided series of twenty-two photographs just prior to the filing of the application and that they depict an accurate portrayal of the Property as it currently exists.

12. Bryan Campbell, one of the Applicants, having a residential address of 34 Spencer

Road, Basking Ridge, New Jersey, was duly sworn according to law. Mr. Campbell testified that he and his wife, co-applicant Jessica Campbell, had purchased the Property several years prior, from a builder who had just completed a major renovation of the home. He stated that their purpose in seeking relief was to provide functional outdoor amenities for their family, to improve the overall aesthetic of the Property, and to provide an easier means for him to move his wastebins from the rear of the dwelling to the end of the driveway for collection. He also testified that when he and his wife purchased the Property, a different, dilapidated shed stood in the same footprint wherein the current one now stands. Believing the old shed to be lawfully present on the Property, Mr. Campbell stated that they had it removed and replaced with the current one, without knowledge that either a variance or permit was required. Mr. Campbell also demonstrated that the side- and rear-yard boundaries of the Property are fenced-in and host substantial screening by means of evergreen trees.

13. Mr. Campbell stipulated that no trees would be removed in connection with the proposed improvements and that the deck would remain open.

14. Mr. Campbell also stipulated that any lighting in the pool and patio areas would be directed downward or otherwise shielded as so not to be a nuisance to surrounding property owners.

15. On questioning, Mr. Campbell stipulated to a reduction in the proposed overall impervious coverage by means of either a cap at a lower percentage, or by removing the portion of the walkway that extends from the proposed patio to the driveway.

16. Also, upon questioning, Mr. Campbell explained that the shed's present location would not impede access for construction equipment to the rear yard from Spencer Road.

17. Jeff Egarian, P.E., of DJ Egarian & Associates, having a business address of 271

Route 46, Suite G208, Fairfield, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Mr. Egarian described the existing and proposed conditions on the Property.

18. Mr. Egarian addressed the comments set forth in the October 6, 2022 Review Memorandum prepared by the Board Planner, Mr. Schley. He also addressed the comments set forth in the October 12, 2022 Review Letter prepared by the Board Engineer, Mr. Quinn.

19. Mr. Egarian stated that as part of the proposed design, water runoff would be routed away from surrounding properties and diverted into a sewer grate fronting on Spencer Road by means of an underground pipe, in instances of excessive runoff.

20. Mr. Todd Edelstein, having a residential address of 172 Riverside Road, Basking Ridge, New Jersey, a member of the public, asked whether the Applicants might consider utilizing a spaced paver design for the proposed walkway to reduce overall impervious coverage, while still providing a workable means to transport wastebins. Mr. Egarian explained that the decrease in coverage would be only marginal.

21. Ms. Beata Cunningham, having a residential address of 38 Spencer Road, Basking Ridge, New Jersey, owner of the lot neighboring the Property to the south, a member of the public, questioned the nature of the relief sought as it related to the shed. Chairwoman Genirs explained that the shed encroached into the southern side-yard setback and that no permit had been obtained for either the current or prior shed, thus requiring the Applicants to obtain a variance for its existence. Ms. Cunningham said she preferred that the shed remain in its current, nonconforming location.

22. No other member of the public questioned the Applicants, witnesses, or Board professionals, or commented on, or objected to, the Applicants' proposal.

DECISION

23. After reviewing the evidence submitted, the Board, by a vote of 6 to 1, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the proposed excessive lot coverage and deficient shed setback under N.J.S.A. 40:55D-70(c)(2).

24. As to the positive criteria for “c(2)” or “flexible c” variance relief for the excessive lot coverage deviation, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law (“MLUL”) will be advanced by the requested 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, and otherwise promotes the general welfare. In this regard, the Board recognizes that the potential for excessive water runoff due to the proposed increase in impervious coverage will be adequately curtailed by the irrigation measures proposed and that the detriments posed by any potential runoff beyond the rear property boundary is mitigated by the fact that the rear-yard neighbor is a section of railway and not a residence or business. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated conditions set forth below. Therefore, the Board finds that the Applicants have demonstrated the positive criteria for the requested variance relief related to the excessive lot coverage, pursuant to N.J.S.A. 40:55D-70(c)(2).

25. As to the positive criteria for “c(2)” or “flexible c” variance relief related to the deficient side-yard setback created by the presence of the accessory shed, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the MLUL will be

advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board further finds that the Applicants have demonstrated that the existing shed promotes the general welfare and fosters a desirable visual environment. In this regard, the Board recognizes that the intent of the side-yard setback provisions of the ordinance are to avoid massing and to preserve the character of neighborhoods. Here, the view of the shed from Spencer Road is largely obstructed by landscaping and fencing, and the view of neighboring dwellings to the shed is obstructed by a sufficient natural buffer. Furthermore, the shed boasts an aesthetically pleasing design that, if visible, would not offend the eye. As such, the Board finds that the Applicants have demonstrated that the benefits of the proposal, particularly the improved aesthetics of the Property, substantially outweigh the modest detriment associated therewith.

26. As to the negative criteria required for variance relief pursuant to subsection (c)(2), related to impervious coverage, 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. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not have a significantly negative impact on the surrounding properties. In this regard, the Board recognizes that the proposed drainage improvements and conditions stipulated to by the Applicants will sufficiently reduce the risks of excessive water runoff onto neighboring lots and so mitigate the impact of the proposed improvements on adjacent properties. The Board also recognizes that no member of the public objected to the proposal, evidencing a lack of substantial detriment to the character of the neighborhood.

27. As to the substantial impairment prong of the negative criteria related to the impervious coverage, the Board finds that the Applicants have demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools, patios, and walkways are permitted in the R-7 (½ Acre) Residential Zone. 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.

28. As to the negative criteria related to the existing shed, 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. As to the substantial detriment prong, related to the shed, the Board finds that the shed is aesthetically consistent with the dwelling, as well as the overall neighborhood, in both form and location. In this regard, the Board recognizes that the Applicants' southerly neighbor, closest to the shed, prefers that the shed remain in its existing location, and the Board again recognizes that no member of the public objected to the Applicants' proposal, evidencing a lack of substantial detriment to the character of the neighborhood.

29. As to the substantial impairment prong, the Board recognizes that the shed is not inconsistent with the zone plan or zoning ordinances as sheds are permitted accessory structures in the R-7 Zone. Moreover, the Board finds that granting the requested variance relief does not rise to the level of constituting a rezoning of the Property as the proposed deviation is relatively modest.

30. 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 October 13, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 9th day of November, 2022, that the application of **BRYAN and JESSICA CAMPBELL**, 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 design of the proposed improvements such that the total impervious coverage of the lot does not exceed 25.30%. The Applicants shall have discretion as to what portions of the proposed improvements will be removed, however, the final design shall be subject to review and approval by the Township/ Board Planner and Board Engineer;
- (3) The project shall be subject to the review and approval of the Somerset-Union Soil Conservation District;
- (4) 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 review and approval by the Township Engineering Department prior to any land disturbance;
- (5) Applicants shall utilize "best management practices" when discharging pool water;
- (6) The provided plans shall be revised to include support for the 75-cubic-foot-per-linear-foot assumption included in the volume calculations for the proposed underground manufactured chamber system. This number appears to be provided by the manufacturer and assumes a 40% void ratio for the stone matrix, whereas the Township Ordinance limits this value to 33%. The plan shall be clarified and revised to the satisfaction of the Township Engineering Department;

- (7) The Applicants shall obtain an engineering permit prior to performing any work within the Spencer Road right-of-way;
- (8) Stormwater infiltration measures shall be provided in accordance with Section 21-42.11 of the Land Development Ordinance. The proposed measures shown on the plans shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit;
- (9) The plan shall be revised to indicate that a soil log(s) shall be performed in the proposed infiltration area(s) to confirm that groundwater is a minimum of 2 feet below the bottom of the infiltration system, and that sufficient permeability exists to fully evacuate the collected runoff within 72 hours;
- (10) The provided plans shall be revised to add grading detail to define the swale(s) necessary to ensure that storm water from all the patio and walkway areas will not bypass the individual inlet collection design, subject to review and approval by the Township Engineer;
- (11) Information regarding pipe sizes, slopes and inverts for all components related to pool and storm water management shall be provided for review by the Township Engineer;
- (12) The lot coverage calculations on the submitted plans shall be revised to reflect the correct shed size of 96 square-feet;
- (13) Any lighting in the pool area shall be directed downward or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (14) The proposed deck shall remain an open deck, not enclosed by any walls, roof, or otherwise, excluding open railings, and the deck floor shall have gaps between boards rather than “tongue in groove” boards, such that it will be pervious;
- (15) No trees shall be removed from the Property in connection with the construction of the proposed improvements;
- (16) 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;
- (17) 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
- (18) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the

variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Baumann, 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 November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**ERIK C. and CATIA R. SILVA
Case No. ZB22-025**

RESOLUTION

WHEREAS, **ERIK C. and CATIA R. SILVA** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance in connection with the construction of an 8’-high deer fence along the rear- and both side-yard boundaries of the property identified as Block 8401, Lot 11 on the Official Tax Map, more commonly known as 48 Crest Drive (the “Property”):

A variance for an 8’-high fence located in the side- and rear-yards, whereas the maximum permitted fence height in a side or rear yard in the R-6 Standard Residential Zone is 6’, pursuant to Section 21-16.2(b) of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on October 13, 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 any objectors and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board has reviewed the application and deemed it to be complete.
2. The Property is a slightly narrow, 1.2-acre lot fronting on Crest Drive, located in the R-6 Standard Residential Zone, being 145’ in width where 150’ is required. The Property is improved with a single-family dwelling, driveway, and associated walkways.
3. The Applicants propose to erect an 8’ high contiguous deer fence along the rear- and side-yard boundaries of the Property, connecting to the dwelling thereon at the dwelling’s most north-westerly and south-easterly points. The proposed fence would also host a 4’ wide

gate along the portion facing Crest Drive to the north of the dwelling, 4' and 10' wide gates along the portion facing Crest Drive to the south of the dwelling, a 4' wide gate along the rear property line, and a 10' wide gate at the location of an existing sanitary sewer easement along the north side property line. The proposed fence would not encroach upon the front yard.

4. The requested variance relief for the fence height deviation is governed by the criteria of N.J.S.A. 40:55D-70(c).

5. The Applicants' proposal is depicted on a marked survey of 48 Crest Drive, prepared by George J. Anderson of George J. Anderson, LLC, dated October 30, 2019, latest revision dated January 15, 2020, consisting of one (1) sheet. An unmarked version of the same survey of 48 Crest Drive, prepared by George J. Anderson of George J. Anderson, LLC, dated October 30, 2019, latest revision dated January 15, 2020, consisting of one (1) sheet was also submitted. The application also included a letter from John Peel, P.P., of PK Environmental, dated June 16, 2022, consisting of one (1) page, indicating that there were no wetlands on or within 150' of the Property. Additionally submitted with the application were a series of photographs apparently depicting the Property from various angles, and a single photograph apparently depicting a section of deer fencing.

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

7. On questioning by the Board, Mr. Schley explained that the height restrictions for fencing in side- and rear-yards were intended to ensure that neighborhoods remained aesthetically pleasing by promoting openness and increased visibility.

8. Erik C. Silva, one of the Applicants, having a residential address of 48 Crest Drive, Basking Ridge, New Jersey, was duly sworn according to law.

9. Mr. Silva testified that he and his wife were requesting relief before the Board in order to construct a 8' high deer fence along the side- and rear-yard boundaries of the Property, connecting to the dwelling thereon at its most north-westerly and south-easterly points. He also testified that the proposed fence would also host a 4' wide gate along the portion connecting to the dwelling facing Crest Drive to the north of the dwelling, 4' and 10' wide gates along the portion connecting to the dwelling facing Crest Drive to the south of the dwelling, 4' wide gate along the rear property line, and a 10' wide gate at the location of an existing sanitary sewer easement along the north side property line. He further stated the proposed fence would not encroach upon the front yard and that the purpose of the fence was to prevent deer and other wildlife from entering the Property and causing a disturbance to his dog and landscaping.

10. Mr. Silva introduced into evidence, as **Exhibit A-1**, a photograph of a 10' wide gate providing egress through a section of deer fencing. He testified that the photograph accurately depicts the style of gate that he proposes to include with the south-westerly portion of fencing connecting to the dwelling.

11. Mr. Silva testified that he had taken the series of photographs depicting the Property that were submitted with the application approximately two months prior to the hearing and confirmed that they accurately depict the Property as it currently exists.

12. Mr. Silva also testified that his wife, Catia, the Co-Applicant, took the photograph of the section of fencing that was submitted with the application approximately one month prior to the hearing and that the photograph accurately depicts the style of fencing he is proposing to erect. Mr. Silva explained that the proposed style of "deer fencing" would boast 8'-high wooden posts with thin metal wires arranged in a grid-like pattern between them that allow for a high degree of visibility while still providing adequate security. He further stated that most deer are

able to jump over 6' high fences and so the additional 2' was necessary to prevent their incursion on the Property.

13. On questioning, Mr. Silva stated that no trees would be removed from the Property for purposes of erecting the fence and stipulated to the same. He also stated that he planned to plant trees around the Property's perimeter after the proposed fence was constructed in order to provide additional screening and to improve the overall aesthetic of the Property.

14. Upon suggestion by the Board, Mr. Silva stipulated to revising the layout of the proposed fence, such that the portion connecting to the dwelling on the north side of the Property would connect to the dwelling's most north-easterly corner, instead of its most north-westerly corner.

15. Mr. Silva further stipulated to updating the provided survey to show the precise location of an existing sanitary sewer easement within the rear yard of the Property.

16. Mr. Silva testified that he had spoken with several of his neighbors about the proposal and that none of them had expressed concerns or objected to it.

17. No member of the public questioned the Applicant or Board professionals, or commented on, or objected to, the application.

DECISION

18. 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 fence height variance relief under N.J.S.A. 40:55D-70(c)(2).

19. 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 deviation from the zoning

requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board further finds that the Applicants have demonstrated that the proposed fencing will continue to promote safety and the general welfare, provide adequate light, air and open space, and promote a desirable visual environment. In this regard, the Board recognizes that the intent of the fence height ordinance is to avoid massing and to preserve the open character of the neighborhood. Here, the proposed gates/fences align with the character of the neighborhood and do not obscure the views of the Property. As such, the Board finds that the Applicants have demonstrated that the benefits of the proposal, particularly the improved aesthetics of the Property, substantially outweigh the relatively modest detriment associated therewith.

20. As to the negative criteria, 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. As to the substantial detriment prong, the Board finds that the proposed fencing will be consistent with the existing dwelling as well as the overall character of the neighborhood and so does not constitute a detriment. In this regard, the Board recognizes that no member of the public objected to the Applicants' proposal. As to the substantial impairment prong, the Board recognizes that the proposed fencing is consistent with the intent and purpose of the zone plan and zoning ordinance as it does not hamper the openness and visibility of the Property. Moreover, the Board finds that granting the requested variance relief does not rise to the level of constituting a rezoning of the Property, as fences are permitted in the R-6 Standard Residential Zone and the height deviation is a relatively modest one.

WHEREAS, the Board took action on this application at its meeting on October 13, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 9th day of November, 2022, that the application of **ERIK C. and CATIA R. SILVA**, 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. No trees shall be removed from the Property in connection with the construction of the fence and gates;
3. The provided survey shall be updated to reflect the precise location of the existing sanitary sewer easement in the rear yard of the Property to the satisfaction of the Township/ Board Planner;
4. The proposed layout of the fencing shall be revised such that the portion connecting to the dwelling on the north side of the Property will connect to the dwelling's most north-easterly (rear) corner;
5. The ultimate location and details of the 10' wide gate at the location of the existing sanitary sewer easement on the Property's north side shall be subject to review and approval by the Bernards Township Sewerage Authority (BTSA) prior to issuance of any permit;
6. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
7. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
8. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

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

Those Opposed: NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on November 9, 2022.

Cyndi Kiefer

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

Dated: November 9, 2022