

TOWNSHIP OF BERNARDS **ZONING BOARD OF ADJUSTMENT**

REGULAR MEETING AGENDA

Warren Craft Meeting Room

January 5, 2022

7:30 PM

This meeting will be held in person in the Warren Craft Meeting Room. In addition, the public will be able to view the meeting live on Optimum/Cablevision TV – Channel 15 and Verizon FIOS TV – Channel 35. For those interested in watching on their computers, the link will be available at 7:30 PM by clicking on the “Watch the Meeting Live” icon on the Bernards Township Zoning Board of Adjustment web page. Please note that all questions/comments must be made in person.

- 1. CALL TO ORDER**
- 2. FLAG SALUTE**
- 3. OPEN PUBLIC MEETING STATEMENT**
- 4. OATHS OF OFFICE**
 - Joe Pavlosky, Regular Member, filling unexpired four-year term (Breslin) expiring 12/31/2023
 - Karl Kraus, Regular Member, four-year term expiring 12/31/25
 - Francis Helverson, Alternate #1, filling unexpired two-year term (Pavlosky) expiring 12/31/2022
 - Nimish Amin, Alternate #2, two-year term, expiring 12/31/23
 - Continuing Members: Baumann, Cambria, Genirs, Pochtar, Tancredi
- 5. ROLL CALL**
- 6. REORGANIZATION MEETING**
- 7. APPROVAL OF MINUTES**
 - A.** December 8, 2021 – Regular Session
- 8. APPROVAL OF RESOLUTIONS**
 - A.** Ahmed, Faizan/Faizan, A.; Block 2301, Lot 5; 62 Wisteria Way; ZB21-030 (approved)
- 9. COMPLETENESS HEARING**
 - A.** B3 Church Street LLC; Block 7501, Lot 15; 15 Church Street; Preliminary/Final Site Plan; “d(1)” Use Variance; ZB21-036
- 10. COMPLETENESS AND PUBLIC HEARING**
 - A.** [Porr, Michael & Wendy](#); Block 1611, Lot 48; 10 Prospect Avenue; Bulk Variances; ZB21-028
 - B.** [Wang, H./Chang, G.](#); Block 4301, Lot 25; 40 Ridgeview Drive; Bulk Variance; ZB21-032
- 11. COMMENTS FROM MEMBERS**
- 12. COMMENTS FROM STAFF**
- 13. ADJOURN**

01/05/2022 dssw
FINAL

TOWNSHIP OF BERNARDS
2019 ZONING BOARD OF ADJUSTMENT APPLICATION

RECEIVED

SEP - 8 2021

PLANNING/ZONING BOARDS

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance | <input type="checkbox"/> Appeal of Zoning Officer's Decision |
| <input type="checkbox"/> Use ("d") Variance | <input type="checkbox"/> Interpretation of Zoning Ordinance |
| <input type="checkbox"/> Conditional Use ("d") Variance | <input type="checkbox"/> Minor Subdivision |
| <input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance | <input type="checkbox"/> Major Subdivision - Preliminary / Final |
| <input type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Other (specify): _____ |

1. APPLICANT: Michael Porr and Wendy Porr

Address: 10 Prospect Avenue Basking Ridge, NJ 07920

Phone: (home) _____ (work) _____ (mobile) (862)345-8119

Email (will be used for official notifications): michael.porr@yahoo.com

2. OWNER (if different from applicant): _____

Address: _____

Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: Frederick B. Zelle / Bisogno, Loeffler & Zelle, L.L.C.

Address: 88 South Finley Avenue, P.O. Box 408, Basking Ridge, New Jersey 07920

Phone: (908) 766-6666 Email (will be used for official notifications): fzelle@baskingridgelaw.com

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):

Name: Rudolph L. Holzmann, PE Yannacone Villa & Aldrich LLC Profession: Engineer

Address: 460 Main Street, P.O. Box 459, Chester, New Jersey 07930

Phone: (908) 879-6646 Email (will be used for official notifications): r.holzmann@yvallc.com

5. PROPERTY INFORMATION: Block(s): 1611 Lot(s): 48 Zone: R-7

Street Address: 10 Prospect Avenue Total Area (square feet/acres): 19,041 SF

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☐ No ☒ Yes (if yes, explain or attach Board resolution) Application ZB21-023, in which impervious coverage variance for swimming pool was denied but shed setback variances were granted.

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☐ No ☒ Yes (if yes, explain) Excessive coverage (28.16% when 20% is permitted), which is a pre-existing, non-conforming condition (predates 1978 ordinance), as per 5/3/2021 email from Zoning Officer Nancy Koederitz submitted herewith; Utility shed is in violation of side and rear yard setbacks, for which variance is being requested herein.

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

[✓] No [] Yes (if yes, explain and attach copy) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

Please see attached Addendum

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.):

Please see attached Addendum.

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____

Please see attached Addendum

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Michael Porr _____ and Wendy Porr _____ hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): R. Michael and Wendy Porr

Sworn and subscribed before me, this 3 day of September, 2021.

Frederick B. Zelley
Frederick B. Zelley, Attorney at Law of State of New Jersey

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

I/we, _____ the owner(s) of the property described in this application,

hereby authorize _____ to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): _____

Sworn and subscribed before me, this _____ day of _____, 2019.

Notary

AMENDED ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION
MICHAEL AND WENDY PORR
10 PROSPECT AVENUE – BLOCK 1611, LOT 48

The following are responses to the respective Application Items noted “Please see Addendum”:

9. [Description of the Existing Property and the Proposal/Request]

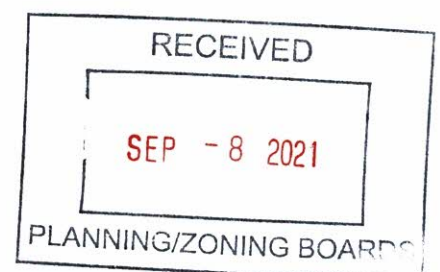
The Applicants wish to install an inground swimming pool in a conforming location in the rear yard of their property. The property is modestly undersized (.437 ac in a half acre zone), and presently hosts a single family residence with a patio, as well as a small utility shed. The house and patio are conforming. The shed, installed in or about 2007, is in violation of the side and rear setbacks but variance relief was granted by this Board in Application ZB21-023 by Resolution dated August 4, 2021. The property has excessive impervious coverage, which is a pre-existing, non-conforming condition, predating the 1978 zoning ordinance, as confirmed by the Zoning Official.

10. [Description of Requested Variances or Exceptions]

Variance for excessive impervious coverage: Ordinance §21-15.1(d)(1) and Table 501. The installation of the proposed inground swimming pool, including its coping and equipment pad, will increase the existing impervious coverage on the property by 731 sf, of which 544 sf is “stormwater neutral” pool water surface area. The Applicants propose to eliminate a 102 sf portion of their driveway asphalt and restore the area to grass. Accordingly, the net increase in impervious coverage is 629 sf. This represents an increase from 28.16% to 31.46%. Discounting the pool water surface area, however, the increase is only 85 sf, or from 28.16% to 28.61%, an arguably *de minimis* increase.

Variance for Side Setback for Swimming Pool Equipment Pad: Ordinance §21-18.2(a). The Applicants propose placing the pool equipment pad 4.0' from the western side line, within existing landscaping. Compliance with the required 20' setback for swimming pools (which includes the pool equipment by definition under the ordinance) would generally place the pad in open, more visible areas of the property, closer to and more visible from neighboring homes.

With the exception of the aforementioned variances, the Applicant believes that no other variance, waiver or exception is required in order to grant the approval requested. However, if the Board directs that additional variance(s), waiver(s) or exception(s) is/are needed, the Applicant may seek the same in accordance with such direction.



11. [Arguments in Support of Application]

The Applicants applied to this Board for variance relief for excessive impervious coverage and for accessory structure setbacks in Application ZB21-023, relating to a proposed swimming pool project for a 672 sf swimming pool to be surrounded by raised open decking instead of traditional cement or other impervious materials. The Board granted the accessory setback variances for an existing storage shed, but denied the impervious coverage variance. The Board, in its August 4, 2021 Resolution, found that:

while the proposal would promote a desirable visual environment and upgrade the housing stock, the detriment associated with the increased coverage and massing, as well as the potential stormwater runoff considerations, would not be substantially outweighed by said benefits. The Board finds that, given the magnitude of the impervious coverage deviation sought and the proposed mass of the residential amenities as compared to the lot area of the Property, the proposal would provide only a relatively modest public benefit, which benefit would not substantially outweigh the relatively significant detriments associated therewith, particularly as to stormwater runoff and massing. Resolution Paragraph 23.

The Board further noted that the “Applicants acknowledged that the proposed pool and/or existing patio could be reduced in size, but that the Applicants voluntarily declined to pursue either course.” Resolution Paragraph 22.

In the within application, the Applicants are proposing an even more modest swimming pool size of 544 sf, and are proposing no surrounding surface (pervious or impervious), other than the requisite pool coping. This reduces the magnitude of the proposed impervious coverage from that requested in the prior application, from 32.08% (6,108 sf) to 31.46% (5,991 sf) and eliminates any massing effect that may have been caused by the previously proposed raised decking surrounding the pool.

Positive Criteria

The variances requested are “C-1” variances, based upon the hardship created by the undersized lot and the locations of the lawfully existing structures and impervious features on the property. As to the coverage variance, but for the undersized lot, the coverage (not including the pool water surface area) would be less than 25% (all but 42 sf of which would be pre-existing, non-conforming). As for the pool equipment setback variance, compliance with the setback would place the equipment in an unfavorable location, such as in the middle of the relatively modest backyard grassed area and/or in a location more visible from the street.

The variances could also be considered “C-2” (“Flexible C”) variances, in that the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*, would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

As to the pool equipment pad variance, installing the pad in the proposed location would satisfy the following purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2:

a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare:

Keeping the shed and pad out of the open grassed areas of the rear yard will contribute to the health, safety and general welfare of the Applicants, their family members and visitors.

c. To provide adequate light, air and open space:

Keeping the shed and pad out of the open grassed areas of the rear yard will maintain the existing light, air and open space of the property.

i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement:

Keeping the shed and pad largely (probably entirely as to the pad) out of view from the street will maintain the existing desirable visual environment of the property and the neighborhood.

There is no perceived detriment to offset the above benefits. The additional impervious coverage, disregarding the “stormwater neutral” pool water surface area, is *de minimis*. The shed has existed in its present location for many years, with no complaints from any neighbors and with no apparent detriment being presented by its location. Because the western side line of the property is adjacent to deep rear yards of the neighboring properties, having the pool equipment in the proposed location is unlikely to have any detrimental impact upon the neighbors, despite not being 20' from the property line. The Applicants respectfully submit that all of the reasoning relied upon by this Board in its August 4, 2021 Resolution, granting setback variance relief for the existing utility shed's non-conforming location, applies equally to the proposed pool equipment pad location.

As to the impervious coverage variance, the addition of a swimming pool to the Applicants' property would assist in conserving property values in the neighborhood as whole, which remains a purpose of land use regulation even though that goal is not expressly stated in N.J.S.A. 40:55D-2. Home Builders League of S. Jersey, Inc. v. Township of Berlin, 81 N.J. 127, 144-45 (1979).

Negative Criteria

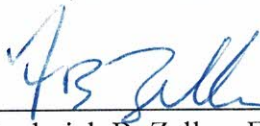
The Negative Criteria are also satisfied, as the variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and the purpose of the zone plan and zoning ordinance.

As to the impervious coverage variance, this Board expressly found in its August 4, 2021 Resolution for Application ZB21-023 that the impervious coverage proposed in that application satisfied the Negative Criteria. Since the magnitude of the impervious coverage proposed in the within application, as well as the magnitude of pervious features proposed in the project, is less than that proposed in the prior application, it is respectfully submitted that the Negative Criteria are satisfied for the within application as well.

As to the pool equipment pad setback variance, the Applicants respectfully submit that all of the reasoning relied upon by this Board in its August 4, 2021 Resolution, granting setback variance relief for the existing utility shed's non-conforming location, applies equally to the proposed pool equipment pad location.

Respectfully Submitted,

BISOGNO, LOEFFLER & ZELLEY, LLC



By: Frederick B. Zelley, Esq.
Attorneys for the Applicants
Michael and Wendy Porr

Dated: September 3, 2021

**TOWNSHIP OF BERNARDS
2021 ZONING BOARD OF ADJUSTMENT APPLICATION**

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OCT 27 2021

PLANNING/ZONING BOARDS

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|--|--|
| <input checked="" type="checkbox"/> Bulk or Dimensional ("c") Variance | <input type="checkbox"/> Appeal of Zoning Officer's Decision |
| <input type="checkbox"/> Use ("d") Variance | <input type="checkbox"/> Interpretation of Zoning Ordinance |
| <input type="checkbox"/> Conditional Use ("d") Variance | <input type="checkbox"/> Minor Subdivision |
| <input type="checkbox"/> Floor Area Ratio, Density, or Height ("d") Variance | <input type="checkbox"/> Major Subdivision - Preliminary / Final |
| <input type="checkbox"/> Site Plan - Preliminary / Final | <input type="checkbox"/> Other (specify): _____ |

1. APPLICANT: Hong Wang + GANLIN CHANG
Address: 40 Ridgeway Drive, Basking Ridge, NJ 07920
Phone: (home) 908-766-1737 (work) _____ (mobile) 973-687-7304
Email (will be used for official notifications): hong669@hotmail.com

2. OWNER (if different from applicant): _____
Address: _____
Phone: _____ Email (will be used for official notifications): _____

3. ATTORNEY: _____
Address: _____
Phone: _____ Email (will be used for official notifications): _____

4. OTHER PROFESSIONALS (Engineer, Architect, etc. Attach additional sheet if necessary):
Name: Cathy Mueller Profession: Engineer
Address: 5 Powderhorn Drive, Suite 4, P.O. Box 4619, Warren, NJ 07059
Phone: 732-805-3939 Email (will be used for official notifications): cmueller@psgemuellereng.com

5. PROPERTY INFORMATION: Block(s): 4301 Lot(s): 25 Zone: R-1
Street Address: 40 Ridgeway Drive Total Area (square feet/acres): 5689 sqft / 2.54 acres

6. ARE THERE ANY PENDING OR PRIOR PLANNING BOARD OR BOARD OF ADJUSTMENT APPLICATIONS INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain or attach Board resolution) _____

7. ARE THERE CURRENTLY ANY VIOLATIONS OF THE ZONING ORDINANCE INVOLVING THE PROPERTY? ☒ No ☐ Yes (if yes, explain) _____

8. ARE THERE ANY DEED RESTRICTIONS OR EASEMENTS AFFECTING THE PROPERTY?

☒ No ☐ Yes (if yes, explain) _____

9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST: _____

It is a single family house. We would like to install an inground swimming pool in our backyard

10. DESCRIPTION OF REQUESTED VARIANCES OR EXCEPTIONS (include Ordinance section no.): _____

The proposed swimming pool is not behind the rear building line of an adjacent dwelling (21-18.1)

11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION: _____

There is no conforming location that is not encumbered by easement or wetland

12. NOTARIZED SIGNATURES (ALL APPLICANTS AND OWNERS MUST SIGN):

APPLICANT(S) SIGN HERE:

I/we, Ganlin Chang and Hong Wang hereby depose and say that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): _____ and _____

Sworn and subscribed before me, this 18th day of October, 2021.

Notary _____

ANTHONY PINTO
Notary Public

State of New Jersey

My Commission Expires May 16, 2022

OWNER(S) SIGN HERE (IF APPLICANT IS NOT THE OWNER):

If the application is made by a person or entity other than the property owner, or by less than all of the property owners, then the property owner or the additional owners must complete the following:

I/we, _____ the owner(s) of the property described in this application,

hereby authorize _____ to act as my/our agent for purposes of making and prosecuting this application and I/we hereby consent to the variance relief (if any) granted and all conditions of approval thereof.

Signature of owner(s): _____

Sworn and subscribed before me, this _____ day of _____, 20__.

Notary _____