

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

**MINUTES** v3  
Regular Meeting  
October 7, 2020

## **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:30 PM.

## **FLAG SALUTE**

**OPEN PUBLIC MEETINGS STATEMENT** – Chairman Breslin read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this meeting of the 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, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk, all on October 5, 2020 and was electronically mailed to all those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township 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: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville, Tancredi  
Members Absent: Eorio, Juwana  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Secretary, Cyndi Kiefer

On motion by Mr. Tancredi seconded by Ms. Pochtar, all eligible in favor and carried, the absences of Mr. Eorio and Mr. Juwana were excused.

## **APPROVAL OF MINUTES**

September 9, 2020 – Regular Session– On motion by Mr. Kraus, seconded by Mr. Seville, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Tancredi

## **APPROVAL OF RESOLUTIONS**

Trinks, Uwe P.; Block 11601, Lot 30; 50 Long Road; Bulk Variances; ZB20-012 (approved) – Ms. Pochtar moved approval of the resolution as drafted. Mr. Cambria seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville  
Nay: NONE  
Abstain: Tancredi (absence)

Motion carried.

Sands, Stephen C. & Laura K.; Block 1204, Lot 20; 141 Washington Avenue; Bulk Variances; ZB20-013 (approved) – Mr. Seville moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville  
Nay: NONE  
Abstain: Tancredi (for absence)

Motion carried.

Becht, Derek J. & Victoria M.; Block 3801, Lot 16; 26 Normandy Court; Bulk Variances; ZB20-014 (approved) – Ms. Genirs moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call: Aye: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville  
Nay: NONE  
Abstain: Tancredi (for absence)

Motion carried.

[Heath, Christopher & Renee](#); Block 10704, Lot 42; 21 Old Stagecoach Road; No Jurisdiction to Eliminate Condition of Approval (eliminate easement requirement); ZB20-007 - Ms. Pochtar moved approval of the resolution as drafted. Chairman Breslin seconded.

Roll call: Aye: Breslin, Pochtar  
Nay: NONE  
Abstain: Cambria, Genirs, Kraus, Seville (ineligible), Tancredi (absence)

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

[A. Sposato Realty Company Inc. & Sposato Realty LP](#); Block 1608, Lots 10.02 & 11; 31 & 35 East Craig Street; Bulk Variances; ZB20-016

Present: Frederick B. Zelle, Esq., Attorney for the Applicants  
Robert V. Kiser, PE, Engineer for the Applicants  
Cynthia Andrews, Executor of the Estate of Armand Sposato

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

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He explained of the three (3) lots created from a minor subdivision approved by Planning Board in 2008, only Lot 10.01 (25 East Craig Street) is conforming. The remaining two lots, Lots 10.02 and 11, required variances which have since expired, for lot frontage and lot width. Mr. Zelle stated that nothing in the Applicants' proposal or in the zoning ordinances has changed since the original approval and that the Applicants are seeking exactly the same variance relief that was granted in 2008.

Cynthia Andrews, residing at 497 Mine Brook Road, explained that she is the Executor of the Estate of Armand Sposato, who was her father. She confirmed that the subdivision had been perfected and that, if the variances are approved, the two (2) subject lots would be sold to the builder who had already purchased Lot 10.01.

Mr. Zelle stated that the Environmental Commission, in its memo dated 09/29/2020, raised issues about the historical significance of the properties however the only action taken in 2008 on this subject was the inclusion of a condition requiring that the Applicants make the properties and any structures thereon, available to the Historical Society of Somerset Hills prior to demolition. He noted that there were no restrictions placed on the *development* of the subject properties and requested that that remain the same for this application.

Mr. Zelle confirmed that he had taken the compendium of nine (9) photos that was submitted with the application and that they represented the subject properties as they currently existed.

Chairman Breslin opened the hearing to the public for questions. Hearing none, that portion was closed.

Robert V. Kiser, PE, CME, PP, engineer with the firm of *Stires Associates, PA*, Somerville, NJ, was accepted by the Board as an expert in civil engineering. He introduced into evidence, as **Exhibit A-1**, a colorized version of the engineering plans submitted with this application combined with the landscape plan (Sheet 8 of 11) approved in 2008. He noted that the variances are required because Lots 10.02 and 11 are considered by ordinance to be "standard lots" even though they are "flag" shaped. He testified that the nonconforming driveway setback for the proposed shared driveway was approved in 2008 and stated that the properties are encumbered by wetlands, wetlands buffer areas, State open waters and steep slopes, all of which are contained in an easement dedicated to the Township. Finally, Mr. Kiser confirmed that nothing, including the proposed dwellings, shared driveway, tree removal plan and stormwater management measures, had been changed since the original Planning Board approvals.

in 2008. In response to a question, Mr. Schley stated that there had been no changes to the tree removal ordinance since 2008.

Mr. Kiser addressed the comments made in Mr. Schley's memo dated 09/29/2020.

Mr. Zelley stated that, as a condition of approval, the Applicants would stipulate to compliance with all of the conditions of the Planning Board's 2008 approval including inspection by a Landscape Committee upon completion of the project.

Mr. Zelley stated that, as a condition of approval, the Applicants would comply with the comments and requirements set forth in Mr. Quinn's memo dated 10/05/2020.

Mr. Kiser stated that, as a condition of approval, the Applicants would comply with the comments and requirements set forth in the Environmental Commission's memo dated 09/29/2020, noting that the tree information requested in the memo is on plans submitted to the Planning Board in 2008. Mr. Schley opined that since the information is already on file, new variance plans showing that same information were not needed.

Hearing no further questions from the Board, Chairman Breslin opened the hearing to the public for questions.

In response to a question from Melissa Thompson, 19 East Craig Street, Mr. Zelley stated that the builder would have to comply with all the conditions set forth in the 2008 approvals.

In response to questions from Christina Bramel, 49 North Finley Avenue, Mr. Kiser testified that the Applicants had not revisited the 2008 landscape plan. Mr. Schley added that ultimately, the landscaping would be subject to the review and approval of a landscape committee, and that the Applicants would be required to plant additional trees if that committee determines that there are deficiencies in buffering.

Allison Fahey, 26 East Craig Street, asked who would be responsible for maintenance of the sidewalks. Mr. Schley advised that it's a public sidewalk maintained the same as sidewalks on adjoining lots, and that there is an easement in place that provides for maintenance obligations of the shared driveway by the two property owners.

Nora Beitz, 39 East Craig Street, asked if anyone had visited the wooded areas recently. Mr. Kiser replied that they had not been reevaluated.

Hearing no further questions from the public, Chairman Breslin opened the hearing to the public for comments.

Ms. Bramel, 49 North Finley Avenue, was duly sworn and expressed concern that the previously approved landscaping plan may no longer be accurate. She requested that the Board ensure that the proposal is sufficient.

Ms. Beitz, 39 East Craig Street, was duly sworn and expressed concern that disturbing the wooded area behind her home would have a significant and detrimental impact on her privacy. She also expressed concern about the condition of the sidewalks and the location of the proposed driveway because of limited visibility.

Ms. Thompson, 19 East Craig Street, was duly sworn and echoed the concerns expressed by Ms. Beitz. She added that removing large trees would change the character of the neighborhood.

Todd Edelstein, 172 Riverside Drive, was duly sworn and requested that the Landscape Committee notify the adjacent property owners as to when the site inspection is scheduled to take place. Mr. Schley confirmed that the landscaping plans are on file and available for public review.

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

Mr. Zelley presented a brief summation, utilizing the Planning Board's reasoning for granting "c(2)" variance relief in 2008. He confirmed that the Applicants would stipulate to all previous conditions.

As conditions of approval, the Board discussed forming a Landscape Committee under the jurisdiction of this Board

as opposed to the Planning Board, requiring that the Applicant advise adjacent property owners about the site inspection, requiring the developer to meet with the Historical Society of Somerset Hills and paving a portion of the shared driveway near the sidewalk.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for both "c(1)" or "hardship" and "c(2)" or "benefits outweigh detriments" variance relief. Mr. Tancredi moved to deem the application complete and to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant the application for the variances requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Genirs seconded.

Roll call:                      Aye:                      Breslin, Cambria, Genirs, Kraus, Pochtar, Seville, Tancredi  
   Nay:                      NONE

Motion carried.

\* \* \* *The Open Session was recessed at 9:35 PM and reconvened at 9:40 PM.* \* \* \*

### **COMPLETENESS AND PUBLIC HEARING**

[Silver Living LLC; Block](#) 1607, Lot 2; 14 North Maple Avenue; Bulk Variances; ZB20-015

Present:                      Frederick B. Zelle, Esq., Attorney for the Applicant  
   William G. Hollows, PE, Engineer for the Applicant  
   Douglas G. Battersby RA, Architect for the Applicant  
   Marco Scarabaggio, Principal/Owner of the Applicant  
   Michael Osterman, Esq., Attorney for an Objector

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application and noted that there was an Objector represented by Counsel present. Mr. Scarabaggio, Mr. Schley and the Applicant's professionals were duly sworn.

Frederick B. Zelle, Esq., attorney with *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicant who sought to raze an existing house and build a new dwelling on the subject property. Mr. Zelle explained that four (4) of the nine (9) variances requested are related to the fact that the subject lot is severely undersized and that he had taken nine (9) photos earlier that day which he submitted as **Exhibit A-1**.

Marco Scarabaggio, principal and owner of *Silver Living LLC*, Bayonne, NJ, testified that he is a developer and that he purchased the subject property in 2019. Using the photos in **Exhibit A-1**, he explained that the existing house is dilapidated beyond repair from years of neglect. **Exhibit A-2**, a compendium of six (6) photos taken by Mr. Zelle when the application was submitted was entered into evidence and Mr. Scarabaggio used those to further demonstrate the level of deterioration of the house. He testified that all of the photos accurately depict the site as it appears today. A discussion ensued between Mr. Scarabaggio and several members of the Board about the condition of the house and the viability of utilizing the existing foundation.

Hearing no further questions from the Board, Chairman Breslin opened the hearing to the public for questions.

Michael Osterman, Esq., attorney with the firm of *Osterman Law LLC*, Somerville, NJ, entered his appearance on behalf of the Objector, Kathleen Grant, residing at 17 East Allen Street. He stated that Ms. Grant's property (Lot 3) is located immediately to the northwest of the subject property. In response to a question from Mr. Osterman, Mr. Scarabaggio stated that the proposed landscape wall would be constructed of decorative rock or façade stone.

In response to questions from Todd Edelstein, 172 Riverside Drive, Mr. Scarabaggio stated that no testing for asbestos would be conducted and that air monitoring equipment would be set up during demolition.

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

Douglas B. Battersby, RA, architect with the firm of *Battersby Architecture and Design*, Oakland, NJ, was accepted by the Board as an expert in architecture. He described the existing house and stated that, judging by the materi-

als used and the style of the house, it was probably built in the late 1800's. Noting the deteriorated condition of the structure, he opined that restoration is not feasible. The new dwelling would be energy efficient and provide a floor plan with amenities that would appeal to prospective buyers, adding that by using a classic center hall colonial layout and architectural detailing, the house will be consistent with the historic character of the neighborhood. The two-car garage will be set back to provide parking in the driveway for two additional vehicles as opposed to parking them on the street as the previous owner had done. Finally, he concluded his testimony by stating that the subject property could accommodate the size of the proposed house because there would still be outdoor space and greenery, opining that aside from a deck, there are no other impervious coverage items that a buyer would want.

Chairman Breslin advised that because of the late hour, the application would be carried to November 4, 2020 with no further notice required.

#### **2019 ANNUAL REPORT AND RECOMMENDATIONS**

In response to comments made during the September meeting, new verbiage was added in Section XV, "Recommendations and Suggestions," which made note of the Board's concern about the upward trend in residential lot coverage variances over the past few years. Mr. Kraus moved to adopt the report as revised. Mr. Seville seconded.

Roll call:	Aye:	Breslin, Cambria, Genirs, Kraus, Pochtar, Seville, Tancredi
	Nay:	NONE

Motion carried.

#### **COMMENTS FROM MEMBERS OR STAFF**

Chairman Breslin stated that the October 15, 2020 meeting would be cancelled.

#### **ADJOURN**

On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the meeting was adjourned at 11:10 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

11/05/2020 v3 dsswaw

*Adopted as amended 11-04-2020*

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**UWE TRINKS  
Case No. ZB20-012**

**RESOLUTION**

WHEREAS, **UWE TRINKS** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), seeking approval for the expansion of an existing deck on the rear of the existing dwelling, and the construction of a two-story addition with an attached sun roof (glass pergola) on the northwest side of the existing dwelling, on property identified as Block 11601, Lot 30 on the Township Tax Map, more commonly known as 50 Long Road (the “Property”):

- (1) Variances for proposed side-yard setbacks (north) of 26.9 feet from both the deck extension and the addition/sunroof, whereas the existing side-yard setback is approximately 21 feet to the deck and 26.9 feet to the existing dwelling, and the minimum required side-yard setback in the R-3 (2 acre) Zone is 50 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Use Ordinance (the “Ordinance”);
- (2) Variances for proposed combined side-yard setbacks of 74.9 feet, whereas the existing combined side-yard setback is approximately 69 feet, and the minimum required combined side-yard setback in the R-3 (2 acre) Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance; and
- (3) Variances for proposed rear-yard setbacks of approximately 37 feet to the deck extension and approximately 30 feet to the addition/sunroof, whereas the existing rear-yard setback is approximately 29 feet to the deck and approximately 37 feet to the existing dwelling, and the minimum required rear-yard setback in the R-3 (2 acre) Zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Ordinance<sup>1</sup>; and

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<sup>1</sup> Given the orientation of the existing dwelling, the rear of which is angled toward the northerly side property line, a 100 foot rear-yard setback is required along the side property line. In this atypical scenario, the rear setback is measured perpendicular to the dwelling, as opposed to being measured perpendicular to the property line. The side-yard setbacks are measured perpendicular to the property line.

WHEREAS, a public hearing on notice was held on this application on September 9, 2020, 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 Property consists of approximately 3.05 acres and is an irregularly shaped, narrow lot with frontage on Long Road. The Property is presently improved with a two-story dwelling, detached garage, breezeway, deck, firepit, gravel area at the end of the driveway, shed, walkways, and paved driveway.

2. The Applicant proposes to construct a 5 foot by 22 foot (110 square feet) expansion of an existing deck at the rear of the existing dwelling and also to construct a two-story, approximately 15.5 foot by 19 foot (579 square feet) addition with an attached approximately 10 foot by 19 foot (190 square feet) sun roof (glass pergola). The proposed addition includes a 295 square foot family room on the first floor and a 284 square foot bedroom on the second floor.

3. The requested bulk variance relief is governed by N.J.S.A. 40:55D-70(c).

4. The Applicant's proposal is depicted on a Survey prepared by Lee E. Amerspek, P.L.S., dated April 4, 2008, unrevised, same consisting of one (1) sheet; Architectural plans prepared by Frank Joseph Bell, R.A., dated March 13, 2019, unrevised, same consisting of three (3) sheets; and a Site Grading & Drainage Plan prepared by Daniel Allen, R.A., dated December 20, 2002, last revised November 4, 2015, same consisting of one (1) sheet. The Applicant also submitted a compendium of photographs, same consisting of three (3) sheets.

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. Uwe Trinks, the Applicant, having an address of 50 Long Road, was duly sworn according to law. Mr. Trinks testified that he purchased the Property approximately 24 years ago. He explained that the lot consists of three (3) acres, whereas the minimum required lot size in the R-3 Zone is two (2) acres, but that the lot is irregularly shaped, long, and narrow. Mr. Trinks further explained that the dwelling itself is oriented uniquely and is located within the required side-yard setback and, therefore, the proposed improvements will require variance relief. He testified that, in 2002, he applied for variance relief to expand the dwelling and that the Board of Adjustment granted the requested relief for the construction of an addition which further reduced the pre-existing nonconforming side- and rear-yard setbacks. Mr. Trinks further testified that the current proposal, while nonconforming, does not exacerbate the magnitude of the existing deviations because the proposed deck expansion and addition/sunroof are no closer to the northerly side property line than the existing dwelling.

7. On questioning, Mr. Trinks testified that his closest neighbor's dwelling is more than 200 feet from his property line. On questioning, he further testified that he had taken the photographs submitted with the application materials in June of 2020 and confirmed that said photographs constituted accurate depictions of the Property as it presently exists.

8. On discussion of the August 26, 2020 Review Memorandum prepared by the Township Planner, Mr. Schley, Mr. Schley explained that the Applicant's dwelling was constructed prior to the 1999 zoning amendments, which amendments increased the minimum required side-yard and combined side-yard setbacks from 20 feet each and 50 feet combined, to 50 feet each and 100 feet combined, respectively. Mr. Schley further explained that the 1999 zoning amendments also increased the minimum required rear-yard setback from 75 feet to 100 feet. He confirmed that the Applicant's proposal does not result in an exacerbation of the existing



nonconforming setbacks.

9. On discussion of Comment 3 of Mr. Schley's Memorandum regarding whether a patio is proposed, Mr. Trinks testified that the Applicant is proposing to construct a 110 square foot patio located between the deck and dwelling in a flat area of the Property. He further testified that the patio would consist of bluestone pavers and he stipulated, as a condition of approval, to revising the plans to reflect same. On discussion of Comment 4, Mr. Trinks stipulated that the deck will remain open, i.e., not enclosed by walls, screens, roofing or otherwise except for railings, which shall be no less than 50% open. Mr. Trinks further stipulated that the proposed sunroof would consist of transparent glass on three sides. He explained that the glass roof has side panels, but the panels can fold back completely.

10. The Applicant stipulated, as a condition of approval, that the exterior of the addition will be substantially similar in materials, colors, and architectural style to the exterior of the balance of the existing dwelling.

11. On discussion of the August 31, 2020 Review Letter prepared by the Board Engineer, Mr. Quinn, Mr. Trinks confirmed that the patio will be 110 square feet and that the deck is not included in the impervious surface calculation, because it does not count towards the total impervious coverage. Mr. Quinn noted that the building addition and sunroom footprint appeared to conflict with the existing electrical service and sewer lateral and that same may require the relocation of said utilities. Mr. Trinks acknowledged Mr. Quinn's comment and testified that the utilities are already located underground and will not be impacted by the proposed construction.

12. On questioning as to whether Mr. Trinks spoke to his neighbors about his proposed improvements, he testified that he had spoken to all of his neighbors except one who was unavailable. Mr. Trinks further testified that none of his neighbors had any objections to his

proposal. He explained that the neighbors likely will not be able to see the proposed improvements since his dwelling is approximately 226 feet from the right-of-way, 80 feet above street level, and there is a wall behind the Property.

13. Mr. Trinks confirmed that the proposed improvements do not result in an exacerbation of the existing nonconforming conditions and, contended therefore, the Board could grant the requested relief for the same “undue hardship” reasons it granted variance relief in 2002.

14. No member of the public commented on, or objected to, the Applicant’s proposal.

### **BOARD DECISION**

15. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicant has satisfied his burden of proving an entitlement to the requested bulk variance relief for the proposed side-, combined side-, and rear-yard setback deviations, pursuant to N.J.S.A. 40:55D-70(c)(1).

16. First, as to the “c(1)” or “hardship” positive criteria, the Board finds that the Applicant has satisfied his burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, the Applicant as the owner of the Property. Here, the Property is an irregularly shaped and narrow lot and, given the location and orientation of the Applicant’s lawfully existing dwelling thereon, it is impossible for the Applicant to construct the proposed improvements in a conforming location.

The Board recognizes that the Applicant’s dwelling was constructed prior to the 1999 zoning amendments which increased the minimum required side- and combined side-yard setback requirements. Moreover, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by these Applicant or any predecessor-in-title. Finally, the Board recognizes that there is no adjacent land

available for the Applicant to acquire to bring the Property into, or closer to, conformity with respect to these deviations.

17. Second, as to the negative criteria for the bulk 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 substantial impairment of the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong, the Board finds that the Applicant has demonstrated that the proposed improvements are not substantially out of character with the neighborhood. In this regard, the Board recognizes that no member of the public objected to the Applicant's proposal. As to the substantial impairment prong, the Board recognizes that a single-family dwelling is a permitted use in the R-3 Zone and finds that granting the requested relief certainly does not rise to the level of a rezoning of the Property.

WHEREAS, the Board took action on this application at its meeting on September 9, 2020, 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, that the application of **UWE TRINKS**, for bulk variance relief, be and is hereby granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
2. The exterior of the additions shall be substantially similar in materials, colors, and architectural style to the exterior of the balance of the existing dwelling;
3. The deck shall remain open, i.e. covered with a roof but not enclosed on the sides except for columns and/or open railings;
4. The sunroof (glass pergola) shall remain substantially glass/transparent on three sides, as proposed;


5. The Applicant shall revise the plans to show the proposed 110 square foot bluestone patio;
6. The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State. The Applicant shall obtain permits and/or approvals from all applicable agencies and/or departments, including but not limited to the Somerset County Planning Board;
7. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein; and
8. 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: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville

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 October 7, 2020.

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

Dated: October 7, 2020

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**STEPHEN AND LAURA SANDS  
Case No. ZB20-013**

**RESOLUTION**

WHEREAS, **STEPHEN AND LAURA SANDS** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance relief in connection with the construction of a 14 foot by 18 foot (252 square foot) louvered pergola/roof on top of an existing open deck, attached to the northwest side of the existing dwelling, located on property identified as Block 1204, Lot 20 on the Tax Map, more commonly known as 141 Washington Avenue (the “Property”):

1. A variance for a proposed rear-yard setback of approximately 36.5 feet to the pergola, whereas the minimum required rear-yard setback in an R-7 (1/2 acre) residential zone is 40 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
2. A variance for a proposed lot coverage of 24.15%, whereas the existing lot coverage is 21.63%, and the maximum permitted coverage in an R-7 (1/2 acres) residential zone is 20%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on September 9, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board reviewed the application and deemed it complete.
2. The Property is an undersized, narrow lot located in the R-7 (1/2 acre) residential zone with frontage on Washington Avenue. The Property is presently improved with a one-story,

single-family residential dwelling, with decks at the northeast (rear) and northwest sides of the dwelling, a brick paver walk, and a paved driveway.

3. The Applicants propose to construct a 14 foot by 18 foot (252 square foot) louvered pergola/roof on top of an existing 16 foot by 22 foot (352 square foot) open deck, attached to the northwest side of the existing dwelling.

4. The Applicants' proposal is depicted on a Survey prepared by Thomas S. Benjamin, P.E., P.L.S., dated March 9, 2015, unrevised, same consisting of one (1) sheet and Pergola plans prepared by Apollo Opening Roof, dated June 10, 2020, unrevised, same consisting of three (3) sheets. The Applicants also submitted photographs of the Property taken by the Applicants in early July of 2020.

5. The requested variance for the rear-yard setback and lot coverage deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

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

7. Stephen and Laura Sands, the Applicants, having an address of 141 Washington Avenue, were duly sworn according to law. Mr. Sands testified that the Applicants are seeking approval to construct a louvered roof over the existing deck. He explained that the Property is significantly undersized. On questioning as to the photographs submitted with the application materials, Mr. Sands testified that he had taken the photographs in early July of 2020 and he confirmed that the photographs constitute an accurate representation of the Property as it presently exists.

8. The Township Planner, Mr. Schley, explained that the Applicants' existing deck does not count towards the lot coverage and can encroach into the required 40 foot rear-yard

setback area, because it constitutes an “open” deck. He further explained that, because the Applicants are seeking to put a roof on the deck, the deck is no longer considered “open” and is, therefore, included in the lot coverage calculations and must comply with the setback regulations. Mr. Schley noted that the existing rear-yard setback, as measured to the rear deck (not the deck proposed to have the louvered roof) is approximately 15 feet, the rear wall of the existing dwelling is 30.5 feet from the rear property line, and the proposed pergola/roof is 36.5 feet from the rear property line.

9. Mr. Schley further advised that the existing lot coverage of 2,162.5 square feet (21.63%) exceeds the maximum permitted lot coverage by 162.5 square feet (1.63%) and the proposed pergola/roof increases the existing lot coverage by 252 square feet (2.52%), resulting in a proposed lot coverage of 2,414.5 square feet (24.15%), which exceeds the maximum permitted lot coverage by 414.5 square feet (4.15%).

10. On questioning as to the proposed height of the deck after the installation of the pergola/roof, Mr. Sands testified that the overall height will be 11 feet from the ground and 9.9 feet from the existing deck surface. The Applicants stipulated, as a condition of approval, that the pergola/roof will remain open on three sides, as shown on the plans and testified to by the Applicants. On questioning by Mr. Quinn as to the proposed color/finish of the pergola, Mr. Sands testified that the finish will be white. On further questioning as to the built in drainage system, Mr. Sands testified that the pergola includes a gutter system that ties into the existing stormwater management system and is then captured in a cistern.

11. On questioning as to the purpose of the pergola, Mr. Sands explained that the pergola will provide shade and will allow the Applicants to use the deck area even during slightly inclement weather. He further explained that, while the pergola/roof can be closed, when it is

closed it cannot support heavy rain or snow. On questioning on how the roof closes, Mr. Sands testified that the roof consists of slats and the slats can be opened and closed using a remote control. He confirmed that, aside from the installation of the pergola/roof, the existing deck is not changing.

12. On questioning as to whether the Applicants had discussed the proposal with their neighbors, Mr. Sands testified that they had done so and that they did not receive any objection to their proposal.

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

### **DECISION**

14. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the lot coverage and rear-yard setback deviations, both under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

15. As to the c(1) positive criteria for the lot coverage and rear-yard setback deviations, the Board finds that the Applicants have demonstrated that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. In this regard, the Board recognizes that the significantly undersized nature of the Property and the location of the lawfully existing improvements thereon make it exceptionally difficult, if not impossible, to construct the proposed improvements in a conforming location. The Board finds that the Applicants have demonstrated that the adjacent properties are developed and that no additional land is available to bring the Property into, or closer to, conformity. The Board further finds that the Applicants have demonstrated that the hardship that would be incurred by them if the zoning regulations were to be strictly enforced would not be



self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have demonstrated the positive criteria for subsection c(1) variance relief.

16. As to the positive criteria for “c(2)” or “flexible c” variance relief for the requested deviations, the Board finds that the proposed construction of the pergola/roof over the existing deck will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. Initially, the Board notes that Section 21-18A of the Land Development Ordinance defines an “open deck” as “a raised platform not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open”, and provides that such a deck may extend into the minimum required rear yard provided certain conditions are met, including a maximum deck area of 600 square feet. The Board recognizes that the Applicants’ existing deck is not changing in size and, instead, a pergola/roof is being constructed over the deck. However, since the deck is no longer “open” it is therefore not exempt from the coverage and rear-yard setback requirements. In this regard, the Board recognizes that, although the addition of the pergola/roof changes the nature of the deck, the pergola/roof will not always be closed because the roof is unable to support significant rain or snow events and, therefore, the deck will largely continue to function as it did prior to the installation of the pergola/roof.

17. The Board finds that the benefits to be derived from this proposal include providing a desirable visual environment, providing adequate light, air and open space, promoting the general welfare, and enhancing the visual compatibility of the Property with adjoining properties. In this regard, the Board recognizes that the proposed improvements will improve the appearance of the Property, provide aesthetic benefits to the neighborhood, increase the safety and functionality of the outdoor living space, and otherwise improve the housing stock in the community. The Board further recognizes that, for comparison purposes, the Applicant’s lot coverage would be a

conforming 11.09% if all of the coverage was located on a conforming 21,780 square foot lot. As such, the Board further finds that the benefits to be derived from the proposed development will substantially outweigh the relatively modest detriments associated with the proposal, particularly given the stipulated to conditions set forth below. Based upon the forgoing, the Board finds that the Applicants have satisfied the positive criteria for c(2) variance relief for the requested zoning deviation.

18. 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 Master Plan or zoning ordinances. The Board considers, as to the first prong of the negative criteria, that the lot coverage and rear-yard setback deviations are relatively modest. Specifically, the proposed increase in coverage results in an exceedance of 414.5 square feet and the magnitude of the rear-yard setback deviation is not being exacerbated. The Board further finds that the modest detriment is mitigated by the conditions stipulated to by the Applicants, and set forth below, and the Board recognizes that no member of the public commented on, or objected to, the application. As to the second prong of the negative criteria, the Board finds that, given that residential decks and porches are permitted structures and that the magnitude of the bulk variance relief sought is modest, granting the requested relief certainly does not rise to the level of constituting a rezoning of the Property.

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

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of October, 2020, that the application of **STEPHEN AND**

**LAURA SANDS**, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

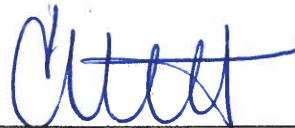
1. The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
2. The proposed pergola/roof shall remain open on three sides as proposed and depicted on the plans and as testified to by the Applicants;
3. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
4. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State, including but not limited to NJDEP regulations and permit requirements; and
5. 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: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville

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 October 7, 2020.



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

Dated: October 7, 2020

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**DEREK BECHT  
Case No. ZB20-014**

**RESOLUTION**

WHEREAS, **DEREK BECHT** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variance relief in connection with the construction of a 310 square foot enclosed/screened porch, adjoining an existing deck on the rear of the existing dwelling, located on property identified as Block 3801, Lot 16 on the Tax Map, more commonly known as 26 Normandy Court (the “Property”):

1. A variance for a proposed rear-yard setback of 56.7 feet, whereas the existing rear-yard setback is 57.9 feet, and the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
2. A variance for an existing nonconforming side-yard setback to two accessory structures (sheds) of approximately 5 feet and 6 feet, respectively, whereas the minimum required side-yard setback for an accessory structure in the R-4 (1 acre) residential zone is 15 feet, pursuant to Section 21-16.1.c and Table 507 of the Land Development Ordinance; and
3. A variance for a proposed lot coverage of 16.04%, whereas the existing lot coverage is 15.27%, and the maximum permitted lot coverage in an R-4 (1 acre) residential zone is 15%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on September 9, 2020, 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 complete.

2. The Property is a slightly undersized, and slightly narrow, irregularly shaped lot located in the R-4 (1 acre) residential zone with frontage on Normandy Court. The Property is presently improved with a two-story frame dwelling, covered porch, wood deck, paver patio, two frame sheds, walkways, and a macadam driveway.

3. The Applicant proposes to construct a 17'5" by 18' (310 square foot) enclosed/screened porch, adjoining an existing deck on the rear of the existing dwelling.

4. The Applicant's proposal is depicted on a Survey prepared by John C. Ritt, P.L.S., dated June 19, 2018, unrevised, same consisting of one (1) sheet; a Variance Map prepared by Stephen E. Parker, P.E., dated July 28, 2020, unrevised, same consisting of one (1) sheet; and Architectural Plans prepared by David A. Denson, dated July 17, 2020, unrevised, same consisting of one (1) sheet. The Applicant also submitted photographs of the Property taken by Mr. Parker in August of 2020.

5. The requested variance for the rear- and side-yard setback and lot coverage deviations are governed by the criteria of N.J.S.A. 40:55D-70(c).

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

7. Derek Becht, the Applicant, having an address of 26 Normandy Court, was duly sworn according to law and testified that he has owned the Property for over two years. He explained that he is seeking approval to construct a screened in porch adjacent to the existing deck so that he and his family can better utilize their outdoor space. Mr. Becht opined that the screened porch would not be visible to the adjacent property owners because there is sufficient landscape buffering in between the porch and the property line.

8. On discussion of Mr. Schley's August 26, 2020 Review Memorandum, Mr. Schley advised that the two sheds on the Property are located within the side-yard setback and the existing deck is 850 square feet and, therefore, because the deck exceeds 600 square feet, it must comply with the rear-yard setback requirement. Mr. Becht advised that the deck and sheds were already on the Property when he purchased it. Mr. Schley explained that the majority of the existing 850 square foot deck encroaches upon the minimum required 75 foot rear-yard setback and that, while the deck appears to be an open deck, which would be permitted within the setback area if it did not exceed 600 square feet in area, the deck does exceed 600 square feet. Mr. Schley noted that the deck provides a 57.9 foot rear-yard setback, while the proposed porch will provide only a 56.7 foot setback, such that the former encroaches into the rear-yard setback area less than the latter. On discussion of Comment 2 of Mr. Schley's Memorandum, Mr. Becht confirmed that the isolated slate area in the rear yard shown on the Survey, but not on the Variance Plan, had been removed since the issuance of the Survey. He also confirmed that the removal of the isolated slate area had already been accounted for in the proposed lot coverage calculation. The Applicant stipulated that the remaining unenclosed portion of the deck shall remain open, i.e., not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open.

9. As to the August 31, 2020 Review Letter prepared by Mr. Quinn, Mr. Becht stipulated, as a condition of approval, to submitting a copy of the Survey referenced on the variance plan. Mr. Quinn confirmed that the Applicant's proposal results in an impervious cover increase of 310 square feet and, therefore, under the Ordinance, is exempt from stormwater management requirements. He further confirmed that the overall exceedance in impervious cover of 1.04% equates to 416 square feet, which is still exempt from stormwater management requirements. Mr. Quinn opined that the proposal likely would not have any impact on the existing stormwater

management given the topography of the Property, such that runoff will be directed toward the front of the Property rather than toward adjacent Lot 15.

10. On questioning as to the existing two sheds, Mr. Becht testified that the sheds existed when he purchased the Property (as did the deck). He explained that they are approximately 4.5 feet tall and are roughly 6' by 2' by 4', or 48 square feet combined. Mr. Becht further explained that the sheds do not have foundations and are used to store a portable generator, lawn equipment, and children's toys. He testified that the sheds cannot be located in a conforming location of 15 feet from the property line because doing so would result in the sheds being located in the driveway.

11. On questioning as to whether he had spoken to his neighbors, Mr. Becht advised that he had not, but that he had noticed them and had not been contacted by anyone thereafter. He opined that the proposal would not have a significantly detrimental impact on the adjacent neighbors, particularly since the increased coverage is de minimis and will be obscured by the existing landscape screening. On questioning, Mr. Parker, having been duly sworn according to law, confirmed that he had taken the photographs submitted with the application materials and that they constituted accurate depictions of the Property as it presently exists.

12. On discussion of the existing sheds and whether they could be replaced, the Applicant stipulated that any replacement of the sheds would be in kind and that the replacement sheds would be the same size or smaller, both as to footprint and height.

13. No member of the public commented on, or objected to, the Applicant's proposal.

### **DECISION**

14. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant have satisfied their burden of proving an entitlement to the requested variance relief

for the lot coverage and side- and rear-yard setback deviations both under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

15. As to the c(1) positive criteria for the lot coverage and side- and rear-yard setback deviations, the Board finds that the Applicant has demonstrated that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, him as the owner of the Property. In this regard, the Board recognizes that the undersized nature of the Property and the location of the lawfully existing improvements thereon, including the orientation of the dwelling, make it exceptionally difficult to construct the proposed improvements in a conforming location. The Board further recognizes that the Applicant cannot relocate the existing sheds to a conforming location because doing so would result in the sheds being in the driveway. The Board finds that the Applicant has demonstrated that the adjacent properties are developed and that no additional land is available to bring the Property into, or closer to, conformity. The Board further finds that the Applicant has demonstrated that the hardship that would be incurred if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. As such, the Board finds that the Applicant has demonstrated the positive criteria for subsection c(1) variance relief.

16. As to the positive criteria for “c(2)” or “flexible c” variance relief for the requested deviations, the Board finds that the construction of a screened porch adjacent to the existing deck will serve multiple purposes of zoning, as set forth in the Municipal Land Use Law. The Board finds that the benefits to be derived from this proposal include providing a desirable visual environment, providing adequate light, air and open space, promoting the general welfare, and enhancing the visual compatibility of the Property with adjoining properties. In this regard, the Board recognizes that the proposed improvements will improve the appearance of the Property,



provide aesthetic benefits to the neighborhood, increase the safety and functionality of the outdoor living space, and otherwise improve the housing stock in the community. The Board further recognizes that the Applicant has proposed to remove a portion of the existing deck to accommodate the proposed screened porch, thereby reducing the amount of deck which presently encroaches upon the minimum required rear yard setback. The Board notes that, for comparison purposes, the Applicant's lot coverage would be a conforming 14.78% if all of the coverage was located on a conforming 43,560 square foot lot. As such, the Board finds that the benefits to be derived from the proposed development will substantially outweigh the relatively modest detriments associated with the proposal, particularly given the stipulated conditions set forth below. Based upon the forgoing, the Board finds that the Applicant has satisfied the positive criteria for c(2) variance relief for the requested zoning deviation.

17. As to the negative criteria, 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 or zoning ordinances. The Board considers, as to the first prong of the negative criteria, that the lot coverage and setback deviations are relatively modest. Specifically, the proposed increase in coverage results in only a slight exceedance of 419 square feet (1.04%) and the sheds have been in the current location for at least two years. The Board finds that the modest detriment is mitigated by the conditions stipulated to by the Applicant, and set forth below, and the Board further recognizes that no member of the public commented on, or objected to, the application. As to the second prong of the negative criteria, the Board recognizes that, given that residential decks, porches and sheds are permitted structures and that the magnitude of the bulk variance relief sought is modest, granting the requested relief certainly does not rise to the level of constituting a rezoning of the Property.

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

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of October, 2020, that the application of **DEREK BECHT**, 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' escrow account;
2. The Applicant shall submit a copy of the Survey referenced on the Variance Plan;
3. The deck shall remain open, i.e., not enclosed by walls, glass, screens, roofing or otherwise, except for railings which are no less than 50% open, as proposed and depicted on the plans and as testified to by the Applicant;
4. If the existing sheds are replaced, the Applicant shall replace said sheds in kind, i.e., the replacement sheds shall be the same size or smaller, both as to footprint and height;
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, including but not limited to NJDEP regulations and permit requirements; and
7. 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: Breslin, Cambria, Genirs, Kraus, Pochtar, Seville

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 October 7, 2020.

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

Dated: October 7, 2020

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**RENEE AND CHRISTOPHER HEATH**

**Case No. ZB20-007**

**RESOLUTION – NO JURISDICTION TO ELIMINATE CONDITIONS  
REQUIRING EASEMENT**

WHEREAS, RENEE AND CHRISTOPHER HEATH (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the elimination of the following conditions imposed in the variance approvals heretofore granted to them, pertaining to the construction of a two-story, approximately 2,530 square foot dwelling with attached two-car garage, with an 865 square foot portion of the existing dwelling foundation to remain for use as a patio, on property identified as Block 10704, Lot 42 on the Tax Map, more commonly known as 21 Old Stagecoach Road:

- Condition 7 of the October 17, 2013 Resolution (ZB13-013):

*“The Applicant shall obtain easements from both Somerset County and Pulte Home Corp. ([or] the Hills Highlands Association) granting the Applicant (Owner) of the Property unrestricted access from Old Stagecoach Road to the driveway of the Property;”*

- Condition 2 of the August 5, 2015 Resolution (ZB13-013B):

*“As to Condition 7 of the Original Resolution, the Applicant shall seek, with reasonable diligence, a judicial determination as to the Applicant’s entitlement to an easement by prescription;”*

- Condition 3 of the August 5, 2015 Resolution (ZB13-013B):

*“As to Condition 7 of the Original Resolution, the Applicant shall continue making good faith efforts to resolve the easement issue prior to the issuance of a Certificate of Occupancy;”*

- Condition 5 of the August 5, 2015 Resolution (ZB13-013B):

*"The Board shall retain jurisdiction over the application and specifically over the resolution of Condition 7 of the Original Resolution"; and*

WHEREAS, the Applicants also proposed to install drainage stones in various locations, exceeding the amount of lot coverage (impervious coverage) previously approved by the Board, and as such, the Applicants requested lot coverage of 22.2%, whereas the previously approved lot coverage was 18.6% and the maximum permitted lot coverage is 15% 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 July 8, and September 9, 2020, at which times 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 Applicants developed the Property as a single-family dwelling pursuant to approvals granted by the Board to Renee Heath in 2013 (the "2013 Approval"), 2014 (an extension of the 2013 Approval), and 2015 (modification/removal of conditions of the 2013 Approval)(the "2015 Approval"). The 2013 Approval called for the driveway to the new dwelling to remain in the same location as the driveway that served a prior dwelling on the Property, before the prior dwelling burned down in the 1990s. The original driveway crossed two properties, one owned by Somerset County (Block 901, Lot 1, assessed in Bridgewater) and one owned by the Hills Highlands Master Association f/k/a Pulte Home Corp. (the "Hills") (Block 10704, Lot 25), before reaching Old Stagecoach Road. As part of the 2013 Approval, the Board imposed conditions of

approval requiring the Applicants to acquire access easements from Somerset County and the Hills. After the 2013 Approval, the driveway was realigned to avoid the Somerset County property, eliminating the need for an easement from the County. The subject of the current application is Condition 7 of the 2013 Approval, which requires the Applicants to acquire an easement from the Hills and the related conditions subsequently stipulated to by the Applicants in the 2015 Approval.

2. As set forth in Paragraph 12 of the 2013 Approval:

*Ms. Heath also testified that the existing driveway leading from Old Stagecoach Road onto the Property crosses small pieces of land owned by Somerset County and Pulte Home Corp. (now presumably owned by The Hills Highlands Master Association). The Applicant stipulated to obtaining easements from both Somerset County and Pulte Home Corp. (or The Hills Highlands Master Association) granting the Applicant (Owner) of the Property unrestricted access from Old Stagecoach Road.*

3. Condition 7 of the 2013 Approval states:

*The Applicant shall obtain easements from both Somerset County and Pulte Home Corp. ([or] the Hills Highlands Association) granting the Applicant (Owner) of the Property unrestricted access from Old Stagecoach Road to the driveway of the Property;*

4. In 2014, the Board granted the Applicants' request for an extension of the relief granted in the 2013. The 2014 Approval extended the original approval by one year, subject to all conditions of the original approval.

5. In 2015, the Applicants again sought relief from the Board because they encountered difficulties obtaining the easements necessary to comply with Condition 7 of the 2013 Approval. The Applicants sought to modify Condition 7 to require the easements be obtained as a condition of a Certificate of Occupancy, rather than as a condition of obtaining a building permit.

As part of the 2015 application, the Applicants also sought to modify Condition 7 to specify that only one easement, from the Hills, be required, because the Applicants had realigned the driveway to avoid crossing the lot owned by Somerset County. The Board granted the requested relief and memorialized same in the 2015 Approval. The 2015 Approval included the following conditions:

2. *As to Condition 7 of the Original Resolution, the Applicant shall seek, with reasonable diligence, a judicial determination as to the Applicant's entitlement to an easement by prescription;*
3. *As to Condition 7 of the Original Resolution, the Applicant shall continue making good faith efforts to resolve the easement issue prior to the issuance of a Certificate of Occupancy; and*
5. *The Board shall retain jurisdiction over the application and specifically over the resolution of Condition 7 of the Original Resolution.*

6. The Applicants now seek to amend the 2013 Approval by eliminating Condition 7, and relatedly by amending the 2015 Approval to eliminate conditions 2 and 3 therefrom, so as to avoid the obligation to obtain the access easement from the Hills.

7. Renee and Christopher Heath, the Applicants, were duly sworn according to law.

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

9. The Board Attorney, Steven K. Warner, Esq., advised the Board that the Applicants are requesting the elimination of Condition #7 of the 2013 Approval and the elimination of the related conditions of the 2015 Approval, which require the Applicants to obtain an easement from the Hills granting unrestricted access from Old Stagecoach Road to the driveway of the Property since it is landlocked. Mr. Warner advised further that a challenge to the Board's

jurisdiction to hear the merits of the application and the Board's authority to grant such relief in this matter had been raised by the Hills.

10. Michael J. Lipari, Esq., of Cutolo Barros, LLC, entered his appearance on behalf of the Hills.

11. Mr. Warner confirmed receipt of the brief submitted by Mr. Lipari which argued a lack of Board jurisdiction due to multiple deficiencies in the content of the Applicants' notice and the 200-foot property owners list ("POL") used by the Applicants for serving personal notice, as well as other arguments challenging the authority of the Board to grant the relief requested by the Applicants.

12. Ms. Heath testified that she had received the brief from Mr. Lipari and that notice had been served to all those listed on the POL for the subject Property, Lot 42, only. She testified that the Applicants had attempted, through negotiations and through the courts, to obtain the easement from the Hills to satisfy Condition 7 in the 2013 Approval and the related conditions in the 2015 Approval. Mr. Warner advised that timely and proper notice was a predicate jurisdictional requirement and, therefore, the issue of jurisdiction had to be decided before a hearing on the merits of the application could proceed. Mr. Warner recommended that the decision on jurisdiction be postponed until the September 9, 2020 public meeting, so that the parties could submit their respective written position statements on the issues of jurisdiction and Board authority and then the Board could hear oral argument, Mr. Warner could advise the Board, and the Board could then render its determination on these predicate issues.

13. After a discussion about which properties should be included in a broader version of the POL, the Applicants appeared to agree that the property owners within 200 feet of the



perimeter of both Lot 42 (the subject Property) and Lot 25 (the Hills' Property) should be included, and it appeared that the Applicants would re-notice since there was no definite proof that the original notice was sent to everyone even on the POL for Lot 42. Mr. Warner noted that the parties were not precluded from continuing settlement discussions prior to the September hearing date in their ongoing effort to arrive at a voluntary agreement whereby the Hills would provide the requisite access easement over the Hills' property. The Board adhered to the advice of its Board Attorney and directed the parties to proceed accordingly. Ms. Heath agreed to provide a written response to the position statement already submitted by Mr. Lipari no later than August 5, 2020, and Mr. Lipari could respond thereto at the September 9, 2020 meeting.

14. At the September 9, 2020 meeting, the Board Attorney, Mr. Warner, summarized the procedural posture of the case. He explained that the Applicants are seeking to eliminate conditions of approval requiring that they obtain an access easement from the owner of Lot 25, the Hills, for access to their Property from Old Stagecoach Road, which access crosses over a portion of Lot 25. Mr. Warner confirmed that all parties were given an opportunity to submit written position statements and that Mr. Lipari, on behalf of the Hills, had previously objected to the application by letter dated May 28, 2020, and subsequently submitted a letter brief dated July 3, 2020 further setting forth the Hills' position. In response to Mr. Lipari's submissions and the arguments he raised at the July 8, 2020 hearing, the Applicants submitted a letter, dated August 5, 2020, with attachments. Mr. Warner reiterated that both parties had been free to make further attempts to negotiate a resolution in the interim between July 8 and September 9, 2020, and that the Applicants had been permitted to re-notice in advance of the September 9, 2020 hearing, though they apparently chose not to do so.

15. Mr. and Mrs. Heath appeared and, having been previously sworn, Ms. Heath confirmed that the Applicants had not served a new notice, but had attempted, albeit unsuccessfully, to negotiate a resolution with the Hills. On questioning as to whether the Applicants had previously attempted to obtain a judicial resolution of the matter, Mrs. Heath confirmed that they had filed an action in Somerset County Superior Court, but that same was dismissed and their motion to reinstate the case was denied by the trial judge. She also confirmed, however, that the dismissal order explicitly provided that a new action could be filed since the dismissal was without prejudice to do so. On questioning, Mrs. Heath conceded that the Applicants could have filed a new case against the Hills to seek to obtain the necessary access easement to their Property, but they had chosen not to do so.

16. On questioning, Mr. Lipari advised that, since the Applicants had not corrected the deficiencies raised in his July 8 and August 5, 2020 submissions relating to the notice, his client still had the same jurisdiction related objections that he had previously raised with respect to the sufficiency of the notice. On discussion of the Board's jurisdiction to hear the matter, Mr. Lipari pointed out that the development application submitted by the Applicants did not include the consent of all of the affected property owners, namely the Hills. He contended that since the Applicants did not obtain permission from the Hills to submit the application, the Applicants were not authorized to seek the relief requested, which impacted the Hills' property. Mr. Lipari further contended that, since Lot 25 is affected by the Applicants' application, the Applicants should have been required to notice both the property owners set forth on the POL for the Property itself, as well as those set forth on the POL for Lot 25, the Hills' property.

17. Mr. Warner summarized the Hills' arguments as relating to (1) whether the Board has jurisdiction based on the notice that was given and (2) whether, regardless of the sufficiency of the notice, the Board had the authority to grant the relief requested by the Applicants. Mr. Warner noted that the Hills raised arguments both as to the identity of the lot owners that should have received notice, as well as the content of the notice provided by the Applicants. He further noted that the Hills also was arguing that, since the Applicants did not obtain consent from the Hills to file the application, the Applicants did not have the proper authorization to file said application and, therefore, same should not be heard by the Board.

18. In response to the Hills' arguments, Mrs. Heath contended that the notice the Applicants provided was sufficient, because when she filed prior applications involving the Property no such additional notice beyond the property owners in the POL for the subject Property had been required. She explained that she is not an attorney and she drafted the content of the notice to the best of her ability. Mrs. Heath testified that the Property had been in her family since the 1970s and the family has accessed the Property by way of both the Somerset County owned property and the Hills' property (previously owned by Pulte). She further testified that, without the requested relief, there is no way to access the Property. Mrs. Heath contended that she had worked in good faith to comply with the condition imposed by the Board, but simply has been unable to do so.

19. In response to Mrs. Heath's statements as to not having been required to notice the property owners set forth on the POL for Lot 25, Mr. Lipari noted that the Property was not always accessed by way of the Hills property because the driveway was previously located on the other side of the Property and, therefore, did not cross over Lot 25.

20. Having heard the arguments made by the parties at the hearing and raised in their written submissions, Mr. Warner rendered his advice to the Board.

21. As to the issue of the notice, Mr. Warner explained that, pursuant to Perlmart of Lacey, Inc. v. Lacey Township Planning Bd., 295 N.J. Super. 234, 241 (App. Div. 1996) and its progeny, failure to provide proper notice to all parties required to receive notice deprives a municipal land use board of jurisdiction and renders any subsequent action a nullity.

22. First, Mr. Warner concurred with the Hills' position that the Applicants' notice was deficient because the Applicants did not serve personal notice on all 200 foot property owners from the Hills' property, Lot 25, despite that improvements were proposed on Lot 25 and the relief requested by the Applicants includes the use of Lot 25. Mr. Warner further advised that the Court in Brower Dev. Corp. v. Planning Board of Clinton, 255 N.J. Super. 262, 270 (App. Div. 1992) considered whether an applicant was required to give notice where the applicant's proposal involved the use of a proposed roadway not contained on the applicant's property. The Brower Court held that, "although the proposed roadway is not contained within the lots slated for residential development, it may be said to be a part of the 'property' that is the subject of plaintiffs' development proposal." Id. at 268. The Brower Court went on to conclude that the property owners near the proposed roadway "would be significantly affected by its construction and should have been afforded notice of the Board's hearing." Id. at 270. Mr. Warner advised that in Curzi v. Harmony Twp. Land Use Board, 2010 N.J. Super. Unpub. LEXIS 1820 (App. Div. 2009), an unpublished Appellate Division decision, the appellate court relied on reasoning similar to that in Brower to again find that notice must be given to property owners located near a secondary

roadway where the secondary roadway is not part of the property in question, but is nevertheless necessary to access said property.

23. Mr. Warner advised that, here, the Hills contended that the proposed accessway located on a portion of Lot 25 is part of the subject 'property' and, therefore, because the property owners within 200 feet of the proposed access would be significantly affected by its use, the property owners set forth on the POL for Lot 25 should have been noticed. Mr. Warner reminded everyone that the Board had given the Applicants sufficient time to obtain the 200 foot POL for Lot 25 and to re-notice to include the additional property owners set forth on said POL in advance of the September 9, 2020 hearing, but that the Applicants chose not to do so. He further advised that the Applicants had not put forth any legal arguments in support of their position that the notice was properly served. Therefore, Mr. Warner advised the Board that, in his legal opinion, the Board did not have jurisdiction to hear the merits of the application because the notice was deficient as it was not properly served.

24. Second, Mr. Warner concurred with the contention by the Hills that the content of the Applicants' notice was deficient, because it was misleading to the public for two reasons: 1) the notice failed to state that Condition 7 of the 2013 Approval had been subsequently modified by application to the Board in 2015, and 2) the notice incorrectly stated that the easement requirement that the Applicants sought to avoid by requesting the elimination of Condition 7 of the 2013 Approval was "not needed due to private road with all homeowners having access over each other's land for access to properties (ingress and egress)." Mr. Warner concurred with the Hills that the statement was incorrect since the Hills had not given the Applicants an easement over Lot 25, nor had one been acquired by the Applicants. Mr. Warner also noted that the

Applicants could have corrected the deficient notice to address the arguments raised by the Hills subsequent to the July 8 hearing date, but the Applicants chose not to do so. Mr. Warner further advised that the Applicants had not put forth any legal arguments in support of their position that the content of the notice was sufficient and not misleading. As such, Mr. Warner advised the Board that, in his legal opinion, the Board did not have jurisdiction to hear the merits of the application for this separate and independent reason that the notice was deficient, specifically that the content of the notice was misleading to the public.

25. Mr. Warner reiterated that, in his legal opinion, the Board lacked jurisdiction to hear the merits of the application because the Applicants' notice was defective both as to its content, which could mislead the public, and as to the magnitude of the property owners previously served with the notice, which should have included the 200 foot property owners on the POL for the Hills' property, Lot 25.

26. Third, Mr. Warner concurred with the contention by the Hills that the Board lacked jurisdiction to hear the merits of the application even assuming, arguendo, that the notice had been sufficient, because the Board did not have the authority to grant, or was preempted from granting, the requested relief. He explained that, by asking to eliminate Condition 7 of the 2013 Approval and the related conditions in the 2015 Approval, the Applicants effectively were asking the Board to grant them an easement over the Hills' property. Mr. Warner further explained that, however, the only way such an easement could be obtained by the Applicants was by voluntary agreement with the property owner (the Hills) or by a decision of a court of competent jurisdiction. Mr. Warner noted that the Applicants conceded that they had not exhausted their ability to pursue their claims in court, because they could still file a new case. Alternatively, Mr. Warner recognized that

the Applicants could have appealed the Court's dismissal of their action, but the Applicants chose not to do so. As such, Mr. Warner advised that, regardless of the sufficiency of the notice by the Applicants, the Board simply could not grant the requested relief, since doing so would effectively constitute granting an easement over the Hills' property despite the Hills' objection thereto, something only a court of competent jurisdiction could order.

27. Mr. Warner advised that the Hills's reliance on the holding in Kline v. Bernardsville Association, Inc., 267 N.J. Super. 473, 478 (App. Div. 1993) was appropriate, because Kline provided that a "landowner may not, without the consent of the easement holder, unreasonably interfere with the latter's rights or change the character of the easement so as to make the use thereof significantly more difficult or burdensome." In Kline, a preexisting easement over the lands of third parties served both the applicant's property and that of an adjoining property owner. The planning board approved the applicant's site plan on the condition that he relocate the easement. The adjoining property owner instituted an action in lieu of prerogative writs challenging the board's authority to order the relocation of the easement. Although the Law Division upheld the board, the Appellate Division reversed. The appellate court reviewed the case law and found that it is the exclusive right of the owner of the dominant tenement (here, the Hills) to say whether the servient tenement owner (here, the Heaths) shall be permitted to change the character and place of the easement. The power to do this, the appellate court held, was not within the jurisdiction of a land use board, which was a creature of the Municipal Land Use Law and may only do as authorized under that law. Id. at 480-81. The land use board was not without resources, however, as the Kline Court suggested that the board could condition development approval on

the applicant's attempt to seek an agreement with the dominant tenement holder, and could also "direct it to commence an action in the courts." Id.

28. Mr. Warner advised the Board that the dictates of the Kline decision and its progeny was the very reason that the Board required the Applicants to obtain easements – by consent or court order – from Somerset County and the Hills, in the 2013 Approval. Given the holding in Kline, Mr. Warner opined that the Board did not have jurisdiction to adjudicate, or implicate, the easement rights of another party, or to effectively create an easement where one was not granted by the owner of such property or ordered by the Court. He further advised that the Applicants had not offered any legal basis in support of their position that the Board had the authority to grant such relief.

29. For all of the reasons set forth above, Mr. Warner advised the Board of his legal opinion that the Board did not have jurisdiction to grant the relief requested by the Applicants. He further advised of his understanding that the Applicants could still pursue such relief by agreement with the Hills or through the judicial process.

30. As to the issue of whether the Applicants could proceed solely with the portion of the application addressing the increased lot coverage as a result of the proposed installation of "drainage stones," Mr. Warner advised that the Board could not now bifurcate the application without the Applicants amending same, since the application sought all of the requested relief as a combined variance application. Moreover, the Applicants indicated that they did not want to pursue the lot coverage variance alone at this time, even if they could do so.



## DECISION

31. After considering the submissions of the Applicants and the Hills, and based upon the advice of the Board Attorney, the Board, by a vote of 7 to 0, determined that it did not have jurisdiction to hear the merits of the application and even, assuming, arguendo, that it did, it nevertheless did not have the authority to grant the Applicants the relief they requested therein. The Board made this determination based upon each and every one of the separate and independent bases contended by the Hills, and concurred with, and expanded upon, by the Board Attorney. Specifically, the Board concluded that: (1) the Board lacked jurisdiction to hear the merits of the application because the Applicants did not serve personal notice on all 200 foot property owners from the Hills' property (Lot 25); (2) the Board lacked jurisdiction to hear the merits of the application because the content of the Applicants' notice was deficient since it was misleading as to the fact that Condition 7 of the 2013 Approval had been modified and because the notice incorrectly stated that the easement requested by the Applicants was "not needed due to private road with all homeowners having access over each other's land for access to properties (ingress and egress)"; and (3) the Board lacks jurisdiction to hear the merits of the application even assuming, arguendo, that the notice was sufficient, because the Board did not have the authority to grant, or was preempted from granting, the requested relief, since it constituted granting the Applicants an easement over the Hills property, despite the Hills' objections thereto, which result could only be obtained from the Hills voluntarily or by order of a court of competent jurisdiction.

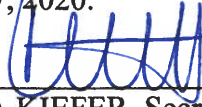
NOW, THEREFORE, BE IT RESOLVED, that the application of **RENEE AND CHRISTOPHER HEATH** is hereby dismissed, with prejudice, for lack of jurisdiction due to deficient notice and for lack of authority due to preemption by the judicial system.

ROLL CALL VOTE:

Those in Favor: Breslin, 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 October 7, 2020.



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

Dated: October 7, 2020

**TOWNSHIP OF BERNARDS  
2019 ZONING BOARD OF ADJUSTMENT APPLICATION**

RECEIVED

AUG 27 2020

PLANNING/ZONING BOARDS  
Officer's Decision

- |  |  |
|--|--|
| <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:** A. Sposato Realty Co., Inc. and Sposato Realty LP

Address: P.O. Box 393, Westhampton, New York 11977

Phone: (home) (908) 625-4685 (work) Same (mobile) Same

Email (will be used for official notifications): candrews@klsir.com

**2. OWNER** (if different from applicant): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email (will be used for official notifications): \_\_\_\_\_

**3. ATTORNEY:** Frederick B. Zelley / Bisogno, Loeffler & Zelley, 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): fzelley@baskingridgelaw.com

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

Name: Craig W. Stires / Stires Associates Profession: Prof. Engineer

Address: 43 W. High St., Somerville, New Jersey 08876

Phone: (908) 439-2277 Email (will be used for official notifications): cstires@stiresassociates.com

**5. PROPERTY INFORMATION:** Block(s): 1608 Lot(s): 11 and 10.02 Zone: R-6

Street Address: 31 and 35 East Craig Street Total Area (square feet/acres): 180,164 sf/ 4.14 ac

**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)

Minor Subdivision Application to Bernards Twp. Planning Board (No. PB#07-003) approved December 2, 2008

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

Lot Frontage and Lot Width on Lot 10.02 (variances granted in 2008 but have expired); Lot Frontage and Side Yard Setback on Lot 11 (variances granted in 2008 but have expired).

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

☐ No ☒ Yes (if yes, explain and attach copy) Share driveway easement over Lot 11 for benefit of Lot 10.02

**9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST:** \_\_\_\_\_

Application is for renewal of the Lot Frontage and Lot Width variances granted by the Planning Board in 2008 for Lot 10.02  
and of the Lot Width and Side Yard Setback variances granted by the Planning Board in 2008 for Lot 11.

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

Ordinance Section 21-15.1(d)(1) and Table 501

**11. THE FOLLOWING ARGUMENTS ARE MADE IN SUPPORT OF THE APPLICATION:** \_\_\_\_\_

Please see reasons set forth in Planning Board Resolution for Application No. PB#07-003 submitted herewith.

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

**APPLICANT(S) SIGN HERE:**

I/we, Cynthia Andrews, for A. Sposato Realty Co., Inc. and Sposato Realty LP 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):  8-27-2020

Sworn and subscribed before me, this 27<sup>th</sup> day of August, 2020.

 Frederick B. Zelle  
An Attorney at Law of the  
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



**TOWNSHIP OF BERNARDS**  
**2019 ZONING BOARD OF ADJUSTMENT APPLICATION**

RECEIVED

AUG 17 2020

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:** Silver Living LLC

Address: 106 Woodbine Circle, New Providence, New Jersey 07974

Phone: (home) (201) 310-8921 (work) Same (mobile) Same

Email (will be used for official notifications): scarabaggiom@gmail.com

**2. OWNER** (if different from applicant): Same as Applicant

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email (will be used for official notifications): \_\_\_\_\_

**3. ATTORNEY:** Frederick B. Zelley / Bisogno, Loeffler & Zelley, 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): fzelley@baskingridgelaw.com

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

Name: William G. Hollows (please also see Addendum) Profession: Professional Engineer

Address: Murphy & Hollows Associates LLC, 192 Central Avenue, Stirling, New Jersey 07980

Phone: (908) 580-1255 Email (will be used for official notifications): murphyhollows@gmail.com

**5. PROPERTY INFORMATION:** Block(s): 1607 Lot(s): 2 Zone: R-7

Street Address: 14 North Maple Avenue Total Area (square feet/acres): 8,276sf/0.19ac

**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) \_\_\_\_\_ The following non-conformities exist but are all believed to predate the zoning ordinance: lot area, lot width, front yard setbacks (both streets), rear yard setback and improvable lot area.

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

[ ] No [ X ] Yes (if yes, explain and attach copy) Sight easement for intersection of East Allen Street and North Maple Avenue

**9. DESCRIPTION OF THE EXISTING PROPERTY AND THE PROPOSAL/REQUEST:** \_\_\_\_\_

\_\_\_\_\_  
Please see Addendum

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

\_\_\_\_\_  
Ordinance Section 21-15.1(d)(1) and Table 501

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

\_\_\_\_\_  
Please see Addendum

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

**APPLICANT(S) SIGN HERE:**

I/we, Silver Living LLC by Marco Scarabaggio, Managing Member hereby deposes and says that all of the above statements and the statements contained in the materials submitted herewith are true and correct.

Signature of Applicant(s): Marco Scarabaggio and \_\_\_\_\_

Sworn and subscribed before me, this 31<sup>st</sup> day of July, 2020.

405 [Signature]  
Notary Frederick B. Zelle  
An Attorney at Law of the  
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

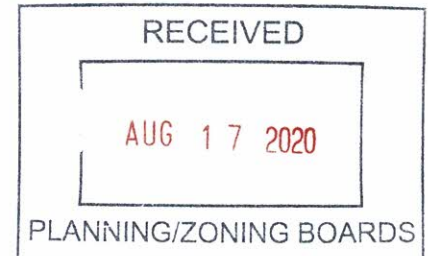


**ADDENDUM TO BOARD OF ADJUSTMENT APPLICATION**  
**SILVER LIVING LLC**  
**14 NORTH MAPLE AVENUE, BLOCK 1607, LOT 2**

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

4. [Additional Professionals]

Douglas Battersby, R.A.  
Battersby Architecture and Design  
P.O. Box 370  
4 Ramapo Valley Road  
Oakland, New Jersey 07436  
201-316-7478  
Doug@BattersbyAD.com



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

The subject property is the southwest corner lot at the intersection of North Maple Avenue and East Allen Street. The property is surrounded by the Presbyterian Church's cemetery to its south, a single family residence to its west, East Allen Street and the lawn of Lot 23 to its north and North Maple Avenue and single family homes thereon to its east. The only structure on the property is a single family, two and one half story frame residence, which is in a severe state of disrepair. The Applicant recently purchased the property from the survivor of two related women (mother and daughter or sisters) who had owned it since 1983. While the Applicant has no direct knowledge of the history of the home, the existence of three (3) separate electric meter cases on its exterior (only one holding a meter presently), suggests that the home was at some point used as a multi-family residence, presumably without legal authority.

The Applicant proposes to raze the existing single family home down to the foundation and to replace it with a modern home of similar architecture to the existing home, utilizing the existing foundation provided it is structurally sound. As noted, the existing home has fallen into a state of extreme disrepair, and in any event its internal configuration is not reasonably conducive to reconfiguration to meet the needs of a modern family. The proposed new home would better meet the needs and desires of a present day family in Bernards Township, given the number, types and layout of the interior rooms and given the inclusion of an attached two car garage and a two car driveway (the existing home has no onsite parking, requiring parking on the very narrow East Allen Street).

10. [Description of Requested Variances or Exceptions]

This is an application for bulk variances for front, side and rear yard setbacks and for lot coverage. The subject lot is also non-conforming as to area, width and improvable area, but these are existing non-conformities that would not be exacerbated by the Applicant's proposal.

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 variances requested are “C-1” variances, based upon the hardship created by the lot being undersized and being a corner lot, and by the location of the lawfully existing home, the foundation of which the Applicant hopes to preserve. The variances are also supported under “C-2” a/k/a “flexible C” analysis, 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. Specifically, the proposed redevelopment of the lot would serve the following purposes of the MLUL: (h) (to encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight); (i) (to promote a desirable visual environment through creative development techniques and good civic design and arrangement); and (j) (to promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land). Furthermore, the replacement of the existing deteriorated and outdated home with a modern home 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).

The Negative Criteria are also satisfied as the variances can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. Like the existing home, the proposed home will be one of only three homes on East Allen Street, with open space to its south (cemetery) and to its north (large lawn area on Lot 23). While the home to its west (which was recently constructed with similar variance relief) will obviously be in close proximity, the two homes together will be surrounded to the south and west by the openness of the cemetery. Given these surroundings, having a larger home on this particular undersized lot will not have a detrimental effect upon the public good or the zone plan.

Respectfully Submitted,

BISOGNO, LOEFFLER & ZELLEY, LLC

  
By: Frederick B. Zelley, Esq.  
Attorneys for the Applicant Silver Living LLC

Dated: August 16, 2020



**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**RESOLUTION**

WHEREAS, N.J.S.A. 40:55D-70.1 requires the Zoning Board of Adjustment of the Township of Bernards (the "Board"), to, at least annually, review its decisions on appeals and applications for variances, prepare a report on its findings regarding the Land Development Ordinance provisions which were the subject of same ("Report"), and adopt, by resolution, the Report and its recommendation for zoning ordinance amendments or revisions, if any (the "Resolution"); and

WHEREAS, N.J.S.A. 40:55D-70.1 further requires the Board to send copies of the Report and Resolution to the Township Committee of the Township of Bernards ("Township Committee") and the Planning Board of the Township of Bernards ("Planning Board"); and

NOW, THEREFORE, BE IT RESOLVED by the Board, that the attached Report for the period of January 1, 2019 through December 31, 2019, be, and hereby is, adopted as the Report of this Board; and

BE IT FURTHER RESOLVED, that copies of this Resolution and the attached Report shall be submitted to the Township Committee and the Planning Board.

**ROLL CALL VOTE**

Those in Favor:                      Breslin, Cambria, Genirs, Kraus, Pochtar, Tancredi, Seville

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 October 7, 2020 meeting.



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

Dated: October 7, 2020

# VENTURA, MIESOWITZ, KEOUGH & WARNER

A PROFESSIONAL CORPORATION  
COUNSELORS AT LAW

MICHAEL VENTURA  
JOHN J. MIESOWITZ\*  
DANIEL G. KEOUGH  
STEVEN K. WARNER▲  
SEAN L. RANKIN\*▲  
JOLANTA MAZIARZ

783 SPRINGFIELD AVENUE  
SUMMIT, NEW JERSEY 07901-2332  
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FAX: (908) 277-1374  
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MARIA BLANCATO  
LAURIE K. LEVINE▲  
STACEY LYNN RYAN  
AUGUST M. VENTURA  
AMANDA C. WOLFE▲

LL.M. IN TAXATION\*  
MEMBER NJ & NY BARS▲

October 8, 2020

OF COUNSEL  
MATTHEW P. ALBANO\*  
JAMES A. VIGLIOTTI

## Via EMAIL

Honorable James Baldassare, Jr., Mayor  
Rhonda Pisano, Municipal Clerk  
Thomas Timko, P.E., Township Engineer  
David Schley, A.I.C.P./P.P., Township Planner  
Kippy Piedici, Township Planning Board Chairwoman  
Brad Breslin, Township Board of Adjustment Chairman

***Re: Report and Recommendations of the Board of  
Adjustment for the Township of Bernards  
for the period January 1, 2019 – December 31, 2019***

Ladies and Gentlemen:

On behalf of the Bernards Township Board of Adjustment, we herewith enclose copies of the 2019 Annual Report and Resolution adopting same dated October 7, 2020, pursuant to N.J.S.A. 40:55D-70.1. Full copies of the resolutions summarized in this report may be obtained through the Secretary of the Board of Adjustment.

Very truly yours,

VENTURA, MIESOWITZ, KEOUGH &  
WARNER, P.C.

By:   
Steven K. Warner

Enclosures

cc: Cyndi Kiefer, Board of Adjustment Secretary (w/enc.)

**REPORT AND RECOMMENDATIONS  
OF THE ZONING BOARD OF ADJUSTMENT  
FOR THE TOWNSHIP OF BERNARDS  
FOR THE PERIOD  
JANUARY 1, 2019 – DECEMBER 31, 2019**

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**REPORT AND RECOMMENDATIONS  
OF THE  
ZONING BOARD OF ADJUSTMENT FOR THE TOWNSHIP OF BERNARDS  
FOR THE PERIOD  
January 1, 2019 through December 31, 2019**

Pursuant to the requirements of N.J.S.A. 40:55D-70.1, the Zoning Board of Adjustment for the Township of Bernards (the “Board”) hereby reports, with copies to the Township Committee and the Planning Board for the Township of Bernards, as follows:

The Board received a total of 25 new applications from January 1, 2019 through December 31, 2019, and decided and adopted memorializing resolutions as to 26 applications during that period. Of the 26 applications decided, 22 were granted, 1 was denied, 1 was granted in part and denied in part, 1 involved jurisdictional and notice issues which were resolved, and 1 involved a reconsideration request that was denied. Nineteen (19) of the applications involved just “bulk” variances under N.J.S.A. 40:55D-70(c), none of the applications involved just “use” variances under N.J.S.A. 40:55D-70(d), two (2) of the applications involved both “bulk” and “use” variances, one (1) of the applications involved the resolution of jurisdictional and notice issues and ultimately was withdrawn, and two (2) of the applications involved an extension of a prior approval. One of the applications involved elimination of a condition of a prior approval, and 1 of the applications involved a denial of reconsideration.

None of the variance applications involved subdivision approval. Two of the applications involved site plan approval under the Board’s ancillary jurisdiction pursuant to N.J.S.A. 40:55D-76, together with bulk variance relief, and one of the applications involved an amendment to a prior site plan approval without variance relief. There were no applications presented for a “certificate of nonconformity” by the Board under N.J.S.A. 40:55D-68.

The number of applications both received, and resolved, by the Board in 2019 were lower than those received (29), and resolved (37), in 2018. Notwithstanding the magnitude, the type of applications were generally, and proportionately, similar to those resolved in 2018.

Generally, the number and types of applications resolved by the Board in 2019 were similar to those cases resolved in 2018.

Copies of all of the Board's resolutions relating to applications heard during the reporting period may be obtained through the Secretary of the Board and a summary of all such applications is included at the end of this Report.

#### **I. Subsection (d) Variance Applications**

The Board considered two (2) variance applications seeking relief under N.J.S.A. 40:55D-70(d) in 2019, as compared to three (3) such applications in 2018 and six (6) in 2017.

The first (d) variance application was In Chabad Center of Somerset County, Inc., Case No. ZB18-022. The Board granted preliminary and final site plan approval, and bulk and d(3) conditional use and d(4) floor area ratio variance relief, in connection with the construction of a one-story addition to the existing building, including a 6,210 square foot sanctuary/social hall on the main level and a 1,018 square foot Mikvah at the basement level, on property identified as Block 8201, Lot 25 on the Tax Map, more commonly known as 3048 Valley Road.

The Property is located in the R-6 Residential zone and consists of 5.157 acres. The existing Chabad Center was constructed in accordance with site plan approvals granted by the Planning Board in 1995 and 2001. The 1995 approval provided for conversion of the then-existing residence to religious use, and the 2001 approval provided for expansion in two phases. Phase I of the 2001 project, which included construction of classrooms, office space, and an expanded parking area, was constructed. Phase II of the 2001 project, which included construction of a 6,318

square foot, 200-person capacity sanctuary/social hall, was not constructed. The infrastructure to support Phase II, including parking and stormwater management improvements, was constructed as part of Phase I as required by the 2001 approval. The Applicant sought to move forward with Phase II of the 2001 project. Since the 2001 Approval had expired, a new development plan approval had to be obtained. The current proposed Phase II consisted of a building addition with adjoining rear patio in essentially the same location as the development that was approved in 2001. The proposed addition included a 6,210 square foot, 200-person capacity sanctuary/social hall on the main level, and a 1,018 square foot Mikvah (religious bath) at the basement level.

The 1995 and 2001 Planning Board approvals were granted when a house of worship with clergy residence was a permitted use in the R-6 Zone. The Land Development Ordinance was amended in 2013, and pursuant to Section 21-10.4.a.3(g), a house of worship with clergy residence became a conditional use in the R-6 Zone. Since the current proposal did not meet all of the conditional use standards set forth in Section 21-12.3.f, the Applicant applied to the Board seeking conditional use variance relief pursuant to N.J.S.A. 40:55D-70d(3), FAR variance relief pursuant to N.J.S.A. 40:55D-70(d)(4), and bulk variance relief pursuant to N.J.S.A. 40:55D-70(c).

The Board found that the Applicant had met its burden of establishing an entitlement to the requested FAR variance relief, pursuant to N.J.S.A. 40:55D-70(d)(4), because the Applicant had demonstrated that the site can accommodate the problems associated with an FAR greater than that permitted by the Land Development Ordinance. See, Randolph Town Center v. Township of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999). In this regard, the Board found that the proposed FAR of 13.5% was modest relative to the size of the Property, particularly since, prior to 2013, a house of worship was a permitted use in the R-6 Zone and the proposed FAR would have complied with the maximum permitted FAR of 15%. The Board further found that the



Applicant cannot obtain any additional land to bring the site closer to conformity and ultimately reduce the FAR. Notwithstanding, the Board recognized that Lot 26 was also owned by another entity associated with the Applicant and that the property served as an additional buffer between the Chabad and neighboring residential properties.

The Board further recognized that a portion of the Property was encumbered by a riparian zone and stream buffer conservation area contained within an existing greenway/public access easement adjoining the Passaic River at the rear of the site and that, as a result, that portion of the Property would remain undeveloped and could serve as a buffer. Moreover, the Board recognized that the site had been accommodating an FAR of more than 10% since the completion of the Phase I improvements without issue. In that regard, the Board further recognized that the Property was adjacent to two busy roadways, a commercial nursery, a church and cemetery. Finally, the Board found that the existing landscaping had matured, such that it sufficiently mitigated any visual detriment associated with the excess floor area. As such, the Board found that the Applicant had satisfied the positive criteria for the requested d(4) FAR variance relief.

As to the d(3) variance relief required, pursuant to Section 21-12.3.f of the Land Use Ordinance, for nonconforming conditions relating to the FAR, lot coverage and the front- and side-yard setbacks for a house of worship, the Board found that, consistent with the standard set forth in Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), the Applicant had established that the site could accommodate the detriments associated with the proposed use despite the violation of those conditions imposed.

As to the front- and side-yard setback deviations, prior to the subsequent amendment of the Land Development Ordinance in 2013, the minimum required setback was 75 feet (rather than the current requirement of 100 feet). The Applicant proposed a front-yard setback from a house

of worship of 75.79 feet and a side-yard setback (east) from a house of worship of 75.88 feet, both of which effectively conformed with the prior standard. Moreover, the Board found that the Applicant had demonstrated that the site could accommodate the deficient setbacks, particularly given the location of the Property, the existing landscaping and the conditions stipulated to by the Applicant. In that regard, the Board recognized that the Property was located at the intersection of two major County roads and is adjacent to the Millington Baptist Church and a plant nursery, and that the deficient setbacks would not have a detrimental impact on the adjacent properties given the nature of the surrounding neighborhood.

As to the number of parking spaces, the Board accepted the Applicant's expert testimony that the existing/proposed 69 parking spaces were sufficient, except for a relatively brief period of time on two days per year when additional parking is necessary. The Board recognized that the proposal required such a variance because the existing/proposed parking supply of 69 spaces did not satisfy the combined parking requirement of 94 spaces, which was based on 67 spaces for the sanctuary/social hall, 25 spaces for the classrooms, and 2 spaces for the clergy residence. The Board considered that the Planning Board approved the same variance in 2001 on the basis that the sanctuary/social hall and the classrooms would not be used simultaneously, and therefore the actual maximum parking demand on site at any one time (aside from on the High Holy Days) would be only 69 spaces. The Board recognized that the Applicant had an agreement with the Millington Baptist Church, such that the Chabad's congregants were permitted to park on the Church's lot during the High Holy Days. The Board further recognized that this arrangement had been in place for many years without issue. As such, the Board concurred with the Applicant's planner that having less parking spaces (and, therefore, less impervious coverage) constituted a better planning alternative than providing 94 parking spaces, many of which would remain unused.

The second (d) variance application was LCB Senior Living Holdings II, LLC, Case No. ZB19-010. The Board granted preliminary and final site plan approval, together with variance and site plan exception relief, in connection with the demolition of an existing building and construction of a new three-story, approximately 92,185 square foot assisted living and memory care facility, located on property identified as Block 2301, Lot 31 on the Township Tax Map, more commonly known as 219 Mount Airy Road.

The Property is a 9.641 acre lot that is accessed from Mount Airy Road/Whitenack Road by way of the Meeker Road Extension. The Meeker Road Extension is located on a privately owned lot (adjoining Lot 30) over which the owner of Lot 31 holds an access easement. The Site has over 600 feet of public street frontage along Whitenack Road; however, the Whitenack Road front yard is largely consumed by a retention pond and wetlands.

The Property is improved with a two-story, 22,618 square foot building originally constructed for office use in accordance with approvals granted by the Planning Board in 1979 and 1980. The Site has most recently been used as a house of worship by King of Kings Worship Center, in accordance with site plan and use variance approvals granted by the Board of Adjustment in 2009.

The Applicant proposed to redevelop the Site for use as an assisted living/memory care facility, including removal of the existing building and construction of a three-story, 92,185 square foot building containing a total of 94 units with 105 beds. The proposed facility includes 67 assisted living units (77 beds), 26 memory care studio units (26 beds), and one two-bedroom companion unit (2 beds). The 67 assisted living units are comprised of 24 studio units (10 of which will be Medicaid units), 33 one-bedroom units, and 10 two-bedroom units.

The proposed development is contained within the existing developed portion of the Property, and resulted in a net reduction in impervious coverage. The proposal utilized the existing driveway off of the Meeker Road Extension, and retained the northerly portion of the existing parking lot. The plan included 57 parking spaces, a drop-off area under a porte cochere at the main building entrance, and a service area for loading and trash collection. The stormwater management design utilized the existing manmade retention pond and included two proposed rain garden/bio-retention basins and a proposed "Stormfilter" manufactured water quality treatment device. The proposal also included an outdoor terrace, patios, gazebo, shed, and emergency generator. Connections to the existing public water and sanitary sewer systems were proposed.

The Property is located in the E-4 Office Zone, where permitted uses include various types of offices, scientific/research laboratories, data processing centers, financial institutions, hospitals and medical clinics. The Land Use Plan Element of the 2010 Master Plan recommends the Site for office/employment development, consistent with the E-4 zoning designation. The proposed assisted living/memory care facility is not a permitted use, requiring a "d(1)" use variance pursuant to N.J.S.A. 40:55D-70d(1). The proposal also required a "d(4)" FAR variance pursuant to N.J.S.A. 40:55D-70d(4) to permit the proposed floor area ratio of 21.95%, a "d(6)" height variance pursuant to N.J.S.A. 40:55D-70d(6) to permit the proposed building height of 49.91', and several "c" (bulk) variances and design exceptions. The Applicant also sought both preliminary and final site plan approval.

The Board found that the Applicant had satisfied its burden of proving an entitlement to preliminary and final site plan approval, d(1), d(4), and d(6) use and bulk variance relief, and the site plan exception relief sought therein.

## **II. Subsection (c) Variance Applications**

The Board decided 21 applications seeking variance relief under N.J.S.A. 40:55D-70(c), 19 of which sought relief under just subsection (c) and 2 of which sought relief under both N.J.S.A. 40:55D-70(c) and (d). Of these 21 subsection (c) cases, 19 were granted (with specific conditions), 1 was denied, and 1 was granted in part and denied in part.

In 11 of the 21 subsection (c) cases, the applicant sought variances from front-yard, rear-yard and/or side-yard setback requirements. The Board granted 10 of these applications with specific conditions, finding generally that the requested deviations from the Land Development Ordinance requirements were relatively minor and/or that sufficient landscape buffering and other screening either existed or was agreed to be installed by the applicants.

In 2 of the 21 subsection (c) cases, the applicant sought a pool location variance. Section 21-18.1 of the Land Development Ordinance requires the location of an in-ground pool behind the rear building line of an existing residential structure on an adjoining lot.

In 2 of the 21 subsection (c) cases, the applicant sought minimum lot area, lot width and/or improvable lot area variances. These cases involved pre-existing undersized lots in which the undersized nature of the lot was impacted by the new construction. The Board granted approval in both cases, satisfying itself in each case that efforts to buy adjacent property from, or sell the subject nonconforming property to, adjacent property owners for fair market value were either sufficiently pursued by the applicants or such efforts would have been futile if pursued, such that the lot sizes could not be brought into, or closer to, conformity.

In 3 of the 21 subsection (c) cases, the applicant sought a fence height and/or location variance, and 3 of the 21 cases involved accessory structure height and/or location variances, all 6 of which applications were granted by the Board. The Board found the deviations to be relatively modest and landscape screening to be sufficient to minimize any visual detriment, and the benefits

to and the benefits to be derived from the application substantially outweighed the associated detriments.

There were 2 applications involving the proposed demolition of an existing dwelling and construction of a new dwelling, both of which applications were granted with specific conditions of approval.

The Board heard 10 applications involving residential additions/expansions. Nine of these applications were granted with specific conditions of approval.

There were 10 cases in which the applicant sought a lot coverage variance. The applications were granted with specific conditions of approval.

A standard condition in all resolutions granting variance relief provides that, pursuant to § 21-5.10 of the Land Development Ordinance, the variance will expire unless the construction or alteration permitted by the variance has actually commenced within one year of the date of the resolution. There were 2 extension requests in 2019.

### **III. Planning Variances Pursuant to Sections 34 and/or 35 of the MLUL**

The Board addressed no applications in 2019 invoking its authority to consider planning variances pursuant to N.J.S.A. 40:55D-35 and -36.

#### **IV. Applications Involving the B-1 Village Business Zone**

There were no applications considered during 2019 involving property located in the B-1 Village Business Zone.

#### **V. Applications Involving the B-2 Neighborhood Business Zone**

There were no applications addressed during 2019 involving a property located in the B-2 Neighborhood Business Zone.

#### **VI. Applications Involving the B-3 Historic Business Zone**

There were no applications considered during 2019 involving property located in the B-3 Historic Business Zone.

#### **VII. Applications Involving the B-4 Liberty Corner Business Zone**

There were no applications considered during 2019 involving the property in B-4 Liberty Corner Business Zone.

#### **VIII. Applications Involving the B-5 Village Center Zone**

There were no applications considered during 2019 involving property located in the B-5 Village Center Zone.

#### **IX. Applications Involving the SH-1, SH-2, and SH-3 Senior Housing Zones**

There were no applications considered during 2019 involving property located in any of the Senior Housing Zones.

#### **X. Applications Involving the E-1, E-2, E-3, E-4 and E-5 Office Zones**

There was one (1) application considered during 2019 involving property located in the E office zones; specifically, the LCB Senior Living Holdings II, LLC application.

#### **XI. Applications Involving the P-1, P-2, P-3, P-4 and P-5 Public Purpose Zones**

There were no applications considered during 2019 involving property located in any of the Public Purpose Zones.

#### **XII. Applications Involving the PUD-5 Planned Unit Development Zone**

There were no applications addressed during 2019 involving property located in the PUD-5 Planned Unit Development zone.

#### **XIII. Site Plan and Subdivision Approvals Under N.J.S.A. 40:55D-76**

There were 3 applications considered in 2019 seeking site plan approval and no applications seeking subdivision approval under the Board's ancillary jurisdiction powers.

#### **XIV. Prior Year Matters on Appeal**

There were no prior year matters on appeal in 2019.

#### **XV. Recommendations and Suggestions**

After reviewing and discussing the applications decided in 2019, the Zoning Board of Adjustment of the Township of Bernards has decided not to make any recommendations or suggestions for Ordinance changes to the Township Committee and the Planning Board. Nonetheless, the Board does wish to recognize an upward trend in the number of residential lot coverage variance applications experienced over the past few years.

In 2019, the Board decided 19 applications involving single-family residences. Nine (47%) of those 19 applications included a request for a lot coverage variance. This relatively high number of lot coverage variance requests has persisted for the past three years, as 40% (33 out of 82) of the total single-family residential variance applications decided in 2017, 2018 and 2019 involved a lot coverage variance. By comparison, only 16% (26 out of 168) of the total single-family residential variance applications decided in the seven years prior, i.e. 2010 through 2016, involved




a lot coverage variance.

The Board will continue to monitor residential lot coverage variance applications and will give further consideration to the subject when drafting its Report and Recommendations for 2020.

We thank the Township Committee and the Planning Board for its consideration of the aforementioned annual report and recommendations.

Respectfully submitted,

ZONING BOARD OF ADJUSTMENT FOR  
THE TOWNSHIP OF BERNARDS

By: /s/   
Brad Breslin, Chairperson

cc: Hon. James Baldassare, Jr., Mayor  
Rhonda Pisano, Municipal Clerk  
Thomas Timko, PE, Township Engineer  
David Schley, AICP, PP, Township Planner  
Kathleen Piedici, Planning Board Chairperson

**Docket Numbers Assigned for the Period  
January 1, 2019 through December 31, 2019**

<u>Docket Number:</u>	<u>Applicant(s):</u>
1. ZB19-001	Utz, John W.
2. ZB19-002	Canady Builders, Inc.
3. ZB19-003	Molnar, James & Anne
4. ZB19-004	Yglesias, Steven/DeCosta, Mia
5. ZB19-005	Richter, Matthew & Lisa
6. ZB19-006	Vohden, Robert & Gina
7. ZB19-007	Heinze, Bradley & Sarah
8. ZB19-008	Knox, William & Carolyn
9. ZB19-009	Bentley, Robert & Nicole
10. ZB19-010	LCB Senior Living Holdings II, LLC
11. ZB19-011	Udelsman, Lee & Jody
12. ZB19-012	Pienaar, Jacobus & Zanette
13. ZB19-013	Mastriano, Peter & Kathy ( <b>Withdrawn</b> )
14. ZB19-014	LaTourette, Thomas & Lisa
15. ZB19-015	DaSilva, David & Jennifer
16. ZB19-016	Buono, Brian
17. ZB19-017	Lordi, Michael & Jacqueline
18. ZB19-018	Merrilees, Matthew & Megan
19. ZB19-019	Harmaty, Marco & Krikorian, Kim
20. ZB19-020	Eorio, Lyndsey & Daniel
21. ZB19-021	Majewski, Matthew & Judith
22. ZB19-022	Family Realty & Mortgage Company, Inc.
23. ZB19-023	Hardy, Edmond & Suzanne
24. ZB19-024	Aptekar, Matthew
25. ZB19-025	Goldstein, Chad & Sandy ( <b>Withdrawn</b> )

**Memorializing Resolutions  
of Applications Heard  
January 1, 2019 through December 31, 2019**

	<u>Date of Resolution</u>	<u>Docket Number:</u>	<u>Applicant:</u>
1.	Feb. 6	ZB18-019	Mowen, William and Lisette
2.	Feb. 6	ZB18-022	Chabad Center of Somerset County, Inc.
3.	Mar. 6	ZB17-038A	Aron, Jesse and Dreyling, Erin
4.	Mar. 6	ZB18-025	Hollo, Dr. Erno
5.	Mar. 6	ZB18-027	Grob, Dr. Oscar F.
6.	Mar. 6	ZB18-028	Duffy, Paul and Faith
7.	Apr. 3	ZB18-029	Hoffman, Alyson and Kermit
8.	Apr. 3	ZB19-002	Canady Builders, Inc.
9.	May 8	ZB19-003	Molnar, James and Anne
10.	Jun. 5	ZB18-011	J. Nan Realty Company, LLC
11.	Jun. 5	ZB18-026	Millington Quarry, Inc.
12.	Jun. 5	ZB19-006	Vohden, Robert and Gina
13.	Jun. 5	ZB19-007	Heinze, Bradley and Sarah
14.	Jun. 5	ZB19-009	Bentley, Robert and Nicole
15.	Jul. 11	ZB18-026	Millington Quarry, Inc.
16.	Jul. 11	ZB19-004	Yglesias, Steven T. and DeCosta, Mia
17.	Jul. 11	ZB19-008	Knox, William and Carolyn
18.	Jul. 11	ZB19-011	Udelsman, Lee and Jody
19.	Aug. 7	ZB18-005	Pareddy, Surandar and Duggirala, Janaki
20.	Aug. 7	ZB19-012	Pienaar, Zanette and Jacobus
21.	Oct. 9	ZB18-026	Millington Quarry, Inc.
22.	Oct. 9	ZB19-014	LaTourette, Thomas and Lisa
23.	Nov. 6	ZB18-005(R)	Pareddy, Surandar & Duggirala, Janaki
24.	Nov. 6	ZB19-010	LCB Senior Holdings II, LLC
25.	Nov. 6	ZB19-015	DaSilva, David and Jennifer
26.	Dec. 4	ZB19-017	Lordi, Michael & Jacqueline Sinatra
27.	Dec. 4	ZB19-018	Merrilees, Matthew & Megan
28.	Dec. 4	ZB19-019	Harmaty, Marco and Krikorian, Kim

## RESOLUTIONS MEMORIALIZED IN 2019

### DOCKET      APPLICANT

**ZB18-019**      **Mowen, William and Lisette**      **Granted: January 9, 2019**  
RC-4 Residential Cluster Zone      **Adopted: February 6, 2019**  
95 Blackburn Road  
Block 8101, Lot 41

Approval for a previously constructed covered deck and gravel driveway areas which cause the property to exceed the maximum permitted lot coverage.

Bulk variance (lot coverage)

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**ZB18-022**      **Chabad Center of Somerset County, Inc.**      **Granted: January 9, 2019**  
R-6 (3/4 acre) Residential Zone      **Adopted: February 6, 2019**  
3048 Valley Road  
Block 8201, Lot 25

Construction of a one-story addition to the existing building, including a 6,210 square foot sanctuary/social hall on the main level and a 1,018 square foot Mikvah at the basement level.

Bulk variances (lot coverage; front-yard setback; side-yard setback; parking; buffer)

d(4) FAR

d(3) conditional use

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**ZB18-025**      **Hollo, Dr. Erno t/a Basking Ridge**      **Granted: February 6, 2019**  
**Animal Hospital**      **Adopted: March 6, 2019**  
R-4 (1 acre) Residential Zone  
340 South Finley Avenue  
Block 2801, Lot 23

Amend site plan approval granted in 2014 to permit a cupola on top of an approved accessory building.

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**ZB18-027      Grob, Dr. Oscar F.      Granted: February 6, 2019**  
R-4 (1 acre) Residential Zone      **Adopted: March 6, 2019**  
38 Galloping Hill Road  
Block 4002, Lot 19

Construction of a 733 square foot inground swimming pool and adjoining wood deck in the rear yard of the existing residence.

Bulk variances (pool location; lot coverage)

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**ZB18-028      Duffy, Paul and Faith      Granted: February 6, 2019**  
R-7 (1/2 acre) Residential Zone      **Adopted: March 6, 2019**  
62 North Finley Avenue  
Block 1502, Lot 2

Reconstruction/expansion of existing front porch, resulting in a three (3) foot forward extension of the porch, and approximately 42 square feet of additional living space on the first floor of the dwelling.

Bulk variances (front-yard setback; side-yard setback)

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**ZB17-038A      Aron, Jesse and Dreyling, Erin      Granted: March 6, 2019**  
R-4 (1 acre) Residential Zone      **Adopted: March 6, 2019**  
128 South Stone Hedge Drive  
Block 7201, Lot 5.01

Extension of previously approved variance for construction of two additions to the existing dwelling.

---

**ZB18-029      Hoffman, Alyson and Kermit      Granted: March 6, 2019**  
R-6 (3/4 acre) Residential Zone      **Adopted: April 3, 2019**  
14 Cedar Street  
Block 1803, Lot 3

Construction of additions/amendments to the existing dwelling: 425 square foot second floor addition above an existing first floor garage/breezeway; 2.5' x 7.5' roof over an existing front stoop; amend previously approved expansion/addition to include 20' x 24' open deck and 8 square foot bump-out to accommodate a fireplace in the family room.

Bulk variances (front-yard setback; rear-yard setback)

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**ZB19-002**     **Canady Builders, Inc.**     **Granted: March 6, 2019**  
R-7 (1/2 acre) Residential Zone     **Adopted: April 3, 2019**  
130 South Maple Avenue  
Block 1611, Lot 19

Removal of existing dwelling and shed and construction of a two-story single-family dwelling with attached, basement level, two-car garage to the rear of the dwelling.

Bulk variances (lot area; improvable lot area; lot width; front-yard setbacks; side-yard setback; lot coverage)

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**ZB19-003**     **Molnar, James and Anne**     **Granted: April 3, 2019**  
R-6 (3/4 acre) Residential Zone     **Adopted: May 8, 2019**  
141 Spencer Road  
Block 2701, Lot 34

Amend prior variance approval in connection with an as-built garage/breezeway addition with raised roofline and a reduced side-yard setback and an added outdoor fireplace.

Bulk variances (side-yard setback; driveway setback; lot coverage)

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**ZB18-011**     **J. Nan Realty Company, LLC**     **Granted: June 5, 2019**  
R-4 (1 acre) Residential Zone     **Adopted: June 5, 2019**  
18 Columbia Road  
Block 3603, Lot 1

Extension of variance approval/deadline to submit resolution-compliant plans (construction of an approximately 4,900 square foot, two-family multifamily residential building, containing four dwelling units)

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**ZB19-006      Vohden, Robert and Gina**  
R-7 (1/2 acre) Residential Zone  
7 Evergreen Place  
Block 1403, Lot 7

**Denied: May 8, 2019**  
**Adopted: June 5, 2019**

Renovation/expansion of the existing one-story dwelling, including the construction of a new covered front porch, a first floor kitchen/great room addition to the rear, a two-car garage addition to the east side, new second floor containing bedrooms, bathrooms and a laundry room above the existing/proposed first floor, removal of an existing rear screened porch, relocation of an existing one-car detached garage/shed, and the modification/realignment of the existing driveway to access the new garage.

Bulk variances (side-yard setback; combined side-yard setback)

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**ZB19-007      Heinze, Bradley and Sarah**  
R-3 (2 acre) Residential Zone  
100 Emerald Valley Lane  
Block 11401, Lot 32

**Granted: May 8, 2019**  
**Adopted: June 5, 2019**

Construction of a two-story addition, including a sunroom on the first floor and a bedroom and bathrooms on the second floor, to the north side of the existing dwelling.

Bulk variances (building height; lot coverage)

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**ZB19-009      Bentley, Robert and Nicole**  
R-6 (3/4 acre) Residential Zone  
13 Woodstone Road  
Block 2903, Lot 16

**Granted: May 8, 2019**  
**Adopted: June 5, 2019**

Outdoor improvements to the existing single-family dwelling, including, (1) replacement of an uncovered wood porch on the north side of the dwelling with a covered masonry porch, (2) replacement of an existing rear wood deck and adjoining trellis, (3) replacement of an existing uncovered front porch, (4) construction of a concrete pad for an above ground spa behind the existing garage, (5) replacement/realignment of the existing driveway, including a reduction in driveway area, (6) replacement/realignment of existing front, side and rear walkways, and the (7) installation of an emergency generator on the north side of the dwelling.

Bulk variances (side-yard setback; combined side-yard setback; lot coverage)

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**ZB19-004**     **Yglesias, Steven T. and DeCosta, Mia**     **Granted: June 5, 2019**  
R-5 (1 acre) Residential Zone     **Adopted: July 11, 2019**  
3137 Valley Road  
Block 8802, Lot 19

Construction of a 192 square foot pool house and wood decking adjoining a previously approved, substantially completed swimming pool.

Bulk variances (lot coverage; rear-yard setback for shed)

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**ZB19-008**     **Knox, William and Carolyn**     **Granted: June 5, 2019**  
R-3 (2 acre) Residential Zone     **Adopted: July 11, 2019**  
415 Mountain Road  
Block 11101, Lot 5

Installation of a ground-mounted photovoltaic solar power system near the southerly front corner of property.

Bulk variance (accessory structure in front yard)

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**ZB19-011**     **Udelsman, Lee and Jody**     **Granted: June 5, 2019**  
R-4 (1 acre) Residential Zone     **Adopted: July 11, 2019**  
108 Goltra Drive  
Block 7901, Lot 17

Replacement of an existing 6 foot deep by 12 foot wide uncovered front porch with a 6 foot deep by 16 foot wide covered front porch.

Bulk variance (front-yard setback)

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**ZB18-005**     **Pareddy, Surandar and Duggirala, Janaki**     **Granted in Part: April 3, 2019**  
R-3 (2 acre) Residential Zone     **Denied in Part: April 3, 2019**  
393 Martinsville Road     **Adopted: August 7, 2019**  
Block 11401, Lot 5.02

Approval of existing (and not previously approved) conditions relating to their substantially completed new dwelling and accessory site improvements, including (1) a driveway gate which exceeds the previously approved height of 8.5 feet, (2) a driveway which does not provide the required 3 foot wide stabilized berms (shoulders), and (3) lot coverage in excess of the maximum permitted lot coverage of 15%.

Bulk variances (fence; driveway; lot coverage)

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**ZB19-012**     **Pienaar, Zanette and Jacobus**  
R-4 (1 acre) Residential Zone  
12 Stockmar Drive  
Block 7101, Lot 14

**Granted: July 11, 2019**  
**Adopted: August 7, 2019**

Approval for three previously installed concrete pads which are used as a patio (315 sq. ft.), a grill area (20 sq. ft.), and a fire pit area (14 sq. ft.).

Bulk variance (lot coverage)

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**ZB18-026**     **Millington Quarry, Inc.**  
M-1 Mining Zone  
135 Stonehouse Road  
Block 6001, Lot 6

Jurisdiction related issues.

**Resolved: May 16, 2019**  
**Adopted: June 5, 2019**

Notice related issues.

**Resolved: June 24, 2019**  
**Adopted: July 11, 2019**

Matter adjourned until August 7, 2019.

Withdrawal of application without prejudice.

**Resolved/Adopted: October 9, 2019**

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**ZB19-014**     **LaTourette, Thomas and Lisa**  
R-4 (1 acre) Residential Zone  
45 Canter Drive  
Block 5302, Lot 6

**Granted: August 7, 2019**  
**Adopted: October 9, 2019**

Renovation/expansion of the existing one-story dwelling, including a (1) a new covered front porch, (2) two one-story additions to the rear of the dwelling, including an additional garage bay at the basement level, (3) a new second floor above the existing first floor, (4) the replacement of the existing patio with a wood deck, and (5) the expansion of the driveway to accommodate the new garage bay.

Bulk variance (rear-yard setback)

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**ZB19-010     LCB Senior Living Holdings II, LLC     Granted: October 9, 2019**  
E-4 Office Zone     Adopted: November 6, 2019  
219 Mount Airy Road  
Block 2301, Lot 31

Demolition of an existing building and construction of a new three-story, approximately 92,185 square foot assisted living and memory care facility.

Bulk variances (steep slope disturbance; accessory building; distance between main building and shed; fence height; parking setback)

d(1) non-conforming use

d(4) FAR

d(6) building height

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**ZB18-005(R)   Paredy, Surandar and Duggirala, Janaki     Denied: October 9, 2019**  
R-3 (2 acre) Residential Zone     Adopted: November 6, 2019  
393 Martinsville Road  
Block 11401, Lot 5.02

Reconsideration of the Board's denial of the portion of the requested variance relief relating to two freestanding walls located within six (6) inches of the property line, and not at least 50% open, and exceeding 4 feet in height in the front yard.

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**ZB19-015     DaSilva, David and Jennifer     Granted: October 9, 2019**  
R-2 (2 acre) Residential Zone     Adopted: November 6, 2019  
29 Dogwood Way  
Block 2602, Lot 11

Removal of an existing two-story dwelling and the construction of a new two-story dwelling utilizing much of the existing foundation and retaining the existing attached two-car garage, existing inground swimming pool and driveway.

Bulk variances (lot width; improvable lot area; front-yard setback)

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**ZB19-017 Lordi, Michael and Jacqueline Sinatra**  
R-7 (1/2 acre) Residential Zone  
76 Washington Avenue  
Block 1205, Lot 5

**Granted: November 6, 2019**  
**Adopted: December 4, 2019**

Construction of a two-story addition to the north side of the existing two-story dwelling, including a two-car garage, bathroom, mudroom, and front entry on the first floor and a master bedroom/bathroom and laundry room on the second floor, and removal of the existing detached two-car garage and shed in the rear yard.

Bulk variance (front-yard setback)

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**ZB19-018 Merrilees, Matthew R. and Megan**  
RC-4 Residential Cluster Zone  
16 Heath Drive  
Block 3901, Lot 25

**Granted: November 6, 2019**  
**Adopted: December 4, 2019**

Installation of a 91 square foot exercise pool/spa adjoining the proposed expansion of an existing deck on the rear of the existing dwelling.

Bulk variance (pool location)

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**ZB19-019 Harmaty, Marco and Krikorian, Kim**  
R-3 (2 acre) Residential Zone  
7 Tall Timer Lane  
Block 6001, Lot 10.09

**Granted: November 6, 2019**  
**Adopted: December 4, 2019**

Construction of decorative gates across the existing driveway near Tall Timber Lane and on the east side (i.e., in the Pond Hill Road front yard) of the existing dwelling.

Bulk variance (driveway/gate fence)

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