

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v2  
Regular Meeting  
March 3, 2021

### **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:31 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 January 7, 2021 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: Agarwal, Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi  
Members Absent: NONE  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Sam Koutsouris, PE; Board Secretary, Cyndi Kiefer

### **APPROVAL OF MINUTES**

February 3, 2021 – Regular Session – On motion by Ms. Pochtar, seconded by Mr. Cambria, all eligible in favor and carried, the minutes were adopted as drafted.

### **APPROVAL OF RESOLUTIONS**

[Maschhoff, Andrew & Anita](#); Block 3704, Lot 1.06; 31 Clairvaux Court; Bulk Variance; ZB21-004 (approved) – Ms. Genirs moved approval of the resolution as drafted. Mr. Kraus seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Genirs, Kraus, Pochtar, Tancredi  
Nay: NONE  
Abstain: Agarwal, Pavlosky (both not eligible)

Motion carried.

[Rossi, Patrick & Nesa](#); Block 2701, Lot 3; 14 Culberson Road; Bulk Variances; ZB21-003 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Mr. Cambria seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Genirs, Kraus, Pochtar, Tancredi  
Nay: NONE  
Abstain: Agarwal, Pavlosky (both not eligible)

Motion carried.

### **RESOLUTION OF DISMISSAL**

[Shaw, Adriane](#); Block 3301, Lot 3; 490 South Maple Avenue; ZB20-021 (dismissed without prejudice) - Ms. Pochtar moved approval of the resolution as drafted. Mr. Cambria seconded.

Roll call: Aye: Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, Pochtar  
Nay: NONE  
Abstain: Agarwal (not eligible), Tancredi (recused)

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

Roti, Joseph S. & Lori Scerbo; Block 11102, Lot 1; 10 Pacer Court; Bulk Variances; ZB21-002

Present: Joseph S. Roti, Lori Scerbo-Roti, Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants and Board Professionals were duly sworn.

Joseph S. Roti, Applicant residing at 10 Pacer Court, explained that the proposed project requires relief for construction of a shed in a "secondary" front yard along Ricky Lane. He explained that because the subject property is a corner lot and therefore has two (2) front yards, one along Pacer Court ("primary" front yard) and the other along Rickey Lane ("secondary" front yard), there is very little area for a conforming location for the shed. In addition, that conforming area is constrained due to an existing septic system and steep slopes. He also sought relief for maximum fence height allowable in a front yard (4 feet) for an existing six-foot high pool fence facing Rickey Lane.

Mr. Roti reviewed the comments in Mr. Schley's memo of 03/01/2021 and Mr. Quinn's memo dated 03/01/2021 to the satisfaction of both professionals. He stipulated to providing landscaping around the proposed shed and testified that no trees would be removed. In addition, he confirmed that there would be no electricity or plumbing installed in the shed. Finally, he stated that he had taken the photos submitted with the application sometime in December and that he had received no negatives comments from the neighbors.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions or comments. Hearing none, that portion of the hearing was closed.

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

Roll call: Aye: Baumann, Breslin, Cambria, Genirs, Kraus, Pochtar, Tancredi  
Nay: NONE  
Abstain: Agarwal, Pavlosky (both not eligible)

Motion carried.

**COMPLETENESS AND PUBLIC HEARING**

Rosenblatt, Marc & Rachel; Block 5001, Lot 21; 30 Cameron Court; Bulk Variance; ZB21-006

Present: Frederick B. Zelle, Esq., Attorney for the Applicants  
David E. Fantina, PE, Engineer for the Applicants  
Marc & Rachel Rosenblatt, Applicants

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application. The Applicants, Mr. Fantina and the Board Professionals were duly sworn.

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He stated that the proposed project, reconstruction/expansion of an existing driveway and construction of an in-ground pool and adjoining patio to the rear of the existing dwelling, necessitates relief for exceeding the maximum allowable impervious coverage. Originally, the Applicants were also requesting relief for the location of the pool (not behind the rear building line of adjacent dwellings) however, they were able to relocate the pool and eliminate that variance.

Mr. Zelley noted that a partially paved township easement (Cameron Court cul-de-sac) on the subject property is to some extent responsible for the overage in impervious coverage.

David E. Fantina, PE, engineer with a business address of Bernardsville, NJ, was accepted by the Board as an expert in the field of civil engineering. He gave a brief description the subject property, noting that the existing driveway is very narrow. By reconfiguring the driveway and providing a parking area in the front of the house, he sought to eliminate the current issue of driving off the side of the existing driveway. He testified that there are no environmental constraints on the property. Noting that even though the proposed overage in coverage is significantly below the Township's threshold for requiring stormwater management measures, the Applicants propose to install two (2) drywells, one in the front (to capture the new driveway runoff) and one in the back (to capture pool/patio runoff). Referring to Mr. Quinn's memo dated 03/01/2021, Mr. Fantina agreed to revise the collection system design to Mr. Quinn's satisfaction and stipulated to the remainder of the comments in the memo. Finally, he stated that many of the neighbors have pools similar to the one being proposed.

Mr. Fantina stated that two (2) trees would be removed and that the Applicants would provide a tree removal/replacement plan. He then addressed the remainder of the comments in Mr. Schley's memo dated 03/01/2021 to Mr. Schley's satisfaction.

Mr. Schley noted that a similar variance had been granted years earlier to an adjacent property (Lot 22) for comparable reasons (Cameron Court cul-de-sac easement). He noted that a condition of approval for that variance requires that, if the cul-de-sac is removed, the existing paved area must be replaced with vegetation and he suggested that a similar condition should be imposed on this approval, if the Board votes favorably on the application.

Mr. Fantina stated that the four (4) photos submitted were taken by Joseph Polacek, ASLA, LLA, landscape architect with the firm of *Eden Design Landscape Architects*, Port Murray, NJ. Also included were two (2) renderings of the proposed project prepared by Mr. Polacek.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions or comments.

William Matuoizzi, 14 Cedar Creek Drive, expressed concern about water runoff to his property which is adjacent to the rear of the subject property. Mr. Fantina testified that there would be no increase in runoff towards his house.

Mr. Rosenblatt responded to Mr. Matuoizzi's concerns about several breaks areas in the vegetative buffering between their properties by stipulating to providing additional plantings if necessary.

Hearing no further comments or questions from either those present or via telephone, Chairman Breslin closed that portion of the hearing.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" variance relief. Ms. Genirs 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 variance relief requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Mr. Tancredi seconded.

Roll call:	Aye:	Baumann, Breslin, Cambria, Genirs, Kraus, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Agarwal, Pavolsky (both ineligible)

Motion carried.

\* \* \* *The Open Session was recessed at 8:44 PM and reconvened at 8:54 PM.* \* \* \*

**PUBLIC HEARING** (continued from 01/06/2021; testimony last heard on 10/07/2020)  
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  
Michael Osterman, Esq., Attorney for an Objector  
Kathleen L. Grant, Objector

Mr. Warner noted that although this application had been carried several times, the original notice had been preserved and hence the Board had jurisdiction to hear the application. Michael Osterman, Esq., attorney for the Objector, had no objection. Mr. Warner reminded those present that they were still under oath, having been duly sworn at the 10/07/2020 meeting and noted that Ms. Baumann and Mr. Pavlosky had viewed the video of that hearing and were therefore eligible to vote.

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler & Zelle LLC*, Basking Ridge, NJ, entered his appearance and stated that the Applicant, Marco Scarabaggio (owner of Silver Living LLC) was unable to attend because of Covid-19 issues. He noted that Mr. Scarabaggio had rendered his testimony during the 10/07/2020 meeting. Based on comments made at that hearing, several changes had been made to the proposed dwelling and its location, according to Mr. Zelle and he opined that the variance relief now being requested could be justified under "c(1)" or "hardship" criteria because the subject property is undersized for the zone. He added that the existing structure is in disrepair and opined that the only realistic solution is to demolish it and to build a new dwelling that would be in character with the historic nature of the surrounding neighborhood.

Douglas B. Battersby, RA, architect with the firm of *Battersby Architecture and Design*, Oakland, NJ, confirmed that his license was still in good standing. He reviewed the changes that had been made in the overall design of the dwelling which included a reduction in both the total square footage of the house and the size of the overall footprint. Mr. Battersby testified that the revised plans called for removal of not only the existing structure but also of the entire existing foundation rather than just a portion which was originally proposed. Making that change allowed him to reduce the size of the house, to relocate it farther from the neighbor (Lot 3) and to include a full basement. In addition, the revised plan would reduce the height of the dwelling, thereby reducing its mass. He testified that the deck, which was added to this design, did not extend much further than the steps of the original house and then described the living areas on each floor, including the basement and the attic, (5 bedrooms and 5.5 bathrooms total). Noting that the existing structure has no driveway or garage, he opined that providing both would prove to be a large benefit to the residents by providing much more off-street parking on a street that is very narrow. Finally, he opined that this type of floor plan including the attached two-car garage, is favored by today's home buyer and that there would be no way to create such a floor plan in the existing structure.

In response to comments from the Board that a detached single-car garage would be more consistent with the character of the area, Mr. Battersby stated that that option would decrease the setback to the west side property line. In addition, by eliminating the attached garage, the master bedroom suite now situated above the garage, would also be lost.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions of the witness.

Michael Osterman, Esq., attorney with the firm of *Osterman Law LLC*, Somerville, NJ, entered his appearance on behalf of an Objector, Kathleen L. Grant who resides at 17 East Allen Street (Lot 3), the property adjacent to the subject property. Mr. Osterman questioned Mr. Battersby about the size and living area of the proposed dwelling, opining that it was excessive compared to the surrounding properties.

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

Mr. Battersby addressed the comments under his purview in Mr. Schley's memo dated 03/01/2021, in Mr. Quinn's memo dated 02/24/2021 and in the Environmental Commission's memos dated 09/29/2020 and 02/24/2021.

William G. Hollows, PE, PLS, PP, engineer with the firm of *Murphy & Hollows Associates LLC*, Stirling, NJ was accepted by the Board as an expert in the field of civil engineering. **Exhibit A-3** ("Existing Conditions") and **Exhibit A-4** ("Proposed Conditions") both colorized versions of portions of Sheet 2 of 3, Variance Plans prepared by Murphy & Hollows Associates LLC and last revised 01/25/2021, were entered into evidence.

Mr. Hollows used the exhibits to describe the subject property conditions and how they affect the proposed dwelling. He then discussed revisions that had been made to address the concerns of the Board and how those changes reduced the variance relief requested. Finally, he opined that the only feasible spot for a detached garage would be close to the property line to the west (Lot 3) and that that would require the removal of three (3) large mature trees that the Applicant had made a large effort to save. A discussion about the feasibility of a detached garage ensued.

Chairman Breslin opened the hearing to the public, both present and via telephone, for questions of the witness.

Mr. Osterman questioned Mr. Hollows about alternate locations for a detached single-car garage, relocation of an existing utility pole and the height of a proposed landscape wall. Finally, he asked if soil removed from the site would be screened for historical artifacts. Mr. Zelley responded to the latter by stating that the Applicant would stipulate to preserving any artifacts found during construction but *not* to proactively searching for them.

Dennis P. Milton, 20 North Maple Avenue, expressed concerns about additional runoff onto his property because of the construction on the subject property. Mr. Hollows responded that the proposed stormwater management measures would prevent that from happening.

Hearing no further questions from the public, Chairman Breslin closed that portion of the hearing.

Kathleen P. Grant, 17 East Allen Street (Lot 3), was asked to testify by Mr. Osterman and was duly sworn by Mr. Warner. She expressed multiple concerns about the style and size of the proposed house and the negative visual impact it would have on her property. She also stated that her view of the proposed landscape wall would negatively impact her view of the historic cemetery wall. **Exhibit O-1**, a copy of a resolution dated 03/04/2003, granting approval of Ms. Grant's application (Docket No. 03-36) to the Zoning Board of Adjustment, was entered into evidence. Ms. Grant explained that after she initially applied to the Board for variance relief for two (2) additions, she had to scale down the size of the additions to reduce both the coverage and the setback deviations in order to gain approval. She noted that the current application is asking for significantly more in relief for lot coverage than even her initial plans which were subsequently revised.

Mr. Zelley questioned Ms. Grant about her concerns with the proposed house noting that there are several homes in historic areas of the Township that are similar in size. She stated that because of the orientation of her house, the new house would obstruct her view, adding that she also objected to the landscape wall regardless of the material used or its location.

Chairman Breslin opened the hearing to the public either present or via telephone, for questions or comments.

Dennis P. Milton, 20 North Maple Avenue, was duly sworn by Mr. Warner. He reiterated his concerns about drainage and added that he felt the proposed house was too large and did not fit in with the historical character of the area.

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

In summation, Mr. Osterman opined that the degree of deviation, especially in lot coverage, is excessive, adding that if the requested relief is granted, it would have a substantial negative impact on Ms. Grant's property and the historic nature of the area. He asserted that the application is inconsistent with the Township's Master Plan Goals and Objectives and the Historic Preservation Plan Element. Mr. Osterman concluded by stating that the Board had set a precedent with the Grant approval concerning reasonable lot coverage overages which are much lower than what is currently requested with this application.

Noting that the existing structure is an eyesore, Mr. Zelley began his summation by stating that the Applicant had made significant efforts to design a project that would be an asset to the neighborhood. He rebutted the claim that the proposed house is out of character with the area and stated that the new structure as designed with an attached garage and driveway, would alleviate on-street parking issues on East Allen Street while serving the needs of today's homebuyer. Citing several purposes from the Municipal Land Use Law, he opined that the Applicant had satisfied the positive criteria for either "c(1)" or "c(2)" variance relief. In reference to the negative criteria, he felt that there would be no detriment to the public good since the new dwelling would be an improvement over the existing conditions and no substantial impairment of the Township's zoning plan and zoning ordinances.

After deliberating, the Board concluded that the Applicant had **not** satisfied the criteria required for either "c(1)" or "hardship" or "c(2)" or "benefits vs. 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 **deny** the application for variance relief requested by the Applicant. Mr. Kraus seconded.

Roll call:	Aye:	Baumann, Breslin, Cambria, Genirs, Kraus, Pochtar, Tancredi
	Nay:	NONE
	Abstain:	Agarwal, Pavlosky (both not eligible)

Motion carried.

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

Mr. Schley advised the Board that because of the large influx in applications, the scheduled second meeting dates in the months of May and June should be utilized.

#### **ADJOURN**

Moved by Chairman Breslin and seconded by Ms. Genirs, all eligible in favor and carried, the meeting was adjourned at 12:19 AM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 04/07/2021*

03/15/2021 v2 dsswaw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ANDREW and ANITA MASCHHOFF  
Case No. ZB21-004**

**RESOLUTION**

WHEREAS, **ANDREW and ANITA MASCHHOFF** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of an inground swimming pool and adjoining patio/walkway, the replacement of an existing deck, and the replacement of an existing boulder retaining wall, same to be located on property identified as Block 3704, Lot 1.06 on the Tax Map, more commonly known as 31 Clairvaux Court (the “Property”):

1. A variance for a proposed lot coverage of 17.05%<sup>1</sup>, whereas the existing lot coverage is 12.97%, and the maximum permitted lot coverage in the R-4 (1 acre) Residential Zone is 15%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
2. A variance to locate an in-ground swimming pool such that it is not behind the rear building line of an adjacent dwelling, in violation of Section 21-18.1 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on February 3, 2021, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

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

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<sup>1</sup> The application materials specify a proposed lot coverage of 18.1%, however, the Applicants’ lot coverage calculations include 462 square feet of coverage attributed to the two proposed retaining walls. Based on the Applicants’ representation that these walls will be constructed of dry-laid natural boulders, like the existing wall shown on the submitted photographs, the walls do not count as lot coverage.

2. The Property is a one (1) acre, pie-shaped lot located in the R-4 (1 acre) Residential Zone with frontage on Clairvaux Court. The Property is presently improved with a two-story, single-family residential dwelling, wood deck, and asphalt driveway.

3. The Applicants propose to construct a 20 foot by 40 foot (800 square feet) inground swimming pool and a 927 square foot adjoining patio/walkway to the rear of the existing dwelling. The Applicants also propose to (1) remove an existing 12 foot by 24 foot (288 square feet) open rear deck and replace same with a 17 foot by 24 foot (408 square feet) open deck and (2) replace the existing boulder retaining wall with two boulder retaining walls. The proposed replacement deck and replacement retaining walls do not require variance relief as they conform with the Ordinance requirements.

4. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Land Development Ordinance, which states “the pool shall be located behind the rear building line of existing residential structures on adjoining lots.” The proposed pool is not to the rear of the adjoining dwellings on Lot 3.02 (15 Clairvaux Court) to the east/rear, and Lot 1.05 (43 Clairvaux Court) to the north side.

5. The Applicants’ proposal is depicted on a Pool Grading Plan prepared by Mathew R. Wilder, P.E., dated December 1, 2020, last revised December 22, 2020, same consisting of one (1) sheet; and a Landscape Development Plan prepared by Larry Butynski, L.L.A., of Cross River Design, Inc., dated October 19, 2020, unrevised, same consisting of one (1) sheet; a Proposed Landscape Development Plan also prepared by Mr. Butynski, dated September 29, 2020, unrevised, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by Kenny L. Kennon, P.L.S., dated March 2, 2009, last revised May 6, 2009, same consisting of one (1) sheet and a compendium of photographs of the Property, same consisting of four (4) sheets .



6. The lot coverage and pool location variances are governed by the criteria of N.J.S.A. 40:55D-70(c).

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

8. Anita Maschhoff, one of the Applicants, having an address of 31 Clairvaux Court, was duly sworn according to law. Ms. Maschhoff testified that the Applicants are seeking approval for the construction of an in-ground pool and adjoining patio/walkway to the rear of the existing dwelling. She explained that the proposed improvements require variance relief because the total lot coverage exceeds the maximum lot coverage permitted and the proposed pool cannot be constructed behind the rear building line of the adjacent residential structures on adjoining lots. Ms. Maschhoff explained that, in addition to the construction of the pool, the Applicants are also proposing to replace an existing open deck and an existing boulder retaining wall with two boulder retaining walls.

9. Larry Butynski, L.L.A., having an address of 1473 Route 22 East, Annandale, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of landscape architecture. Mr. Butynski testified that he had taken the photographs submitted with the application during late Summer of 2020 and that they accurately depict the Property as it currently exists. Referencing the photographs submitted with the application materials, he testified that there is a conforming location where the proposed pool could be located, but that said location would require the Applicants to remove a significant number of mature trees. Mr. Butynski explained that, in the proposed location, the Applicant would still have to remove some trees, but that said trees are of lesser quality than those that would have to be removed if the pool were to be located in the conforming location. He further explained that

the proposed pool location is closer to the existing dwelling, which, given the higher elevation of the neighboring properties, will provide more privacy, both to the Applicants and the neighbors, than if the pool were to be located in a conforming location. He also noted that the proposed location is closer to the dwelling which will improve supervision and increase the overall safety of the proposal. Mr. Butynski opined that, given the grading that would be required, the increased distance from the dwelling, and required removal of trees if the pool is located in the conforming location, locating the pool in the proposed location, which is flat, will result in less disturbance.

10. Mr. Butynski explained that the Applicants also are seeking to replace their existing 12 foot by 24 foot deck with a larger, 17 foot by 24 foot deck, as well as to replace an existing boulder wall with two boulder walls. He testified that constructing the pool in the proposed location will require the removal of seven (7) trees, whereas locating the pool in the conforming location would require the removal of ten (10) to twelve (12) trees.

11. On discussion of Mr. Schley's Review Memorandum dated January 28, 2021, Mr. Butynski discussed the existing and proposed landscape buffering along the perimeter of the Property. He explained that, by using decking and stepping stones, the Applicants attempted to design the proposal so as to minimize the increase in impervious coverage. The Applicants stipulated, as conditions of approval, to complying with the comments and requirements set forth in Mr. Schley's Review Memorandum.

12. On discussion of Mr. Quinn's Review Memorandum dated January 28, 2021, it was noted that the square footage of the retaining walls had been included in the total impervious coverage calculation. As such, once the square footage of the retaining walls and the pool water surface was subtracted from the total impervious coverage calculation, the effective increase in impervious coverage fell below the threshold that would trigger stormwater mitigation measures.

Notwithstanding that the Applicants did not technically have to provide stormwater management measures, Mr. Butynski testified that the Applicants still intended to provide such measures.

13. On discussion of the Environmental Commission's Review Memorandum dated January 26, 2021, Mr. Butynski testified that, if the Applicants were to use a rain garden as requested in the review memorandum, said rain garden would consume a large portion of the Property. He contended that the stormwater management measures proposed by the Applicants represent a better solution.

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

### **DECISION**

15. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the proposed impervious coverage exceedance under N.J.S.A. 40:55D-70(c)(2), and the proposed non-conforming pool location under both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

16. As to the positive criteria for the "c(1)" or "hardship" variance for the requested pool location deviation, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the Property, the strict application of the zoning regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the Applicants. The Board finds that the exceptionally unique physical features affecting the Property include the layout and configuration of Property, particularly such that, due to the curve of the street and the irregular/angular lot lines, there is little uniformity in position/orientation among the dwellings on the Applicants' lot and adjoining Lots 3.02 and 1.05. The proposed pool would have to be moved to the rear of the Property, the majority of which contains mature trees, to comply with the pool location requirement and locating the pool in said location would result

in additional disturbance, tree removal, and safety concerns due to limited visibility of the pool from the dwelling. Therefore, the Board determines that the requested variance from such strict application of the regulations is warranted so as to relieve the Applicants from such exceptional difficulties or undue hardship.

17. The Board recognizes that the legislative intent underlying the pool location ordinance was to locate more active uses in rear yards and to “line up” rear yard uses for adjacent neighbors. The Board concludes that requiring the Applicants to comply with the pool location requirement would not serve the intent of the pool location ordinance any better than it would be served by locating the pool in the location proposed by the Applicants. The Board further finds that the hardship that would result from the strict application of the zoning ordinance provision would not be by virtue of a condition that was “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for variance relief pursuant to N.J.S.A. 40:55D-70(c)(1).

18. As to the positive criteria for “c(2)” or “flexible c” variance relief for both the excessive lot coverage and the pool location deviations, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that the proposed pool will not be visible from the right-of-way and will be screened by the dwelling itself. The Board further recognizes that locating the proposed pool in a conforming location would require additional disturbance, removal of trees, and would generally restrict the Applicants’ ability to monitor their children. As

to the requested relief for the lot coverage exceedance, the Board recognizes that the Applicants attempted to reduce the overall coverage by using a wooden deck and stepping stones, rather than pavers. The Board further recognizes that, while the Applicants are not required to provide stormwater infiltration measures, they are installing an additional, larger drywell. Further, the Board finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. As such, the Board finds that the Applicants have satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70(c)(2).

19. As to the negative criteria for all of the requested variance relief, the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will not be substantially out of character with the existing neighborhood and will not have a substantial negative impact on the surrounding properties. In this regard, the Board recognizes that the pool will be sufficiently screened both by the existing and proposed landscaping, and that the conditions stipulated to by the Applicants will further reduce the impact of the proposed improvements on the adjacent properties. The Board further recognizes that no member of the public objected to the Applicants' proposal. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools are permitted accessory structures. The Board finds in this regard that the requested deviations are relatively modest in nature and certainly do not rise to the level of constituting a rezoning of the Property. As such, the Board finds that the Applicants have

satisfied the negative criteria pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

20. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested bulk variance relief.

WHEREAS, the Board took action on this application at its meeting on February 3, 2021, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 3rd day of March, 2021, that the application of **ANDREW and ANITA MASCHHOFF**, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- (2) The Applicants shall satisfy all outstanding municipal tax obligations to date;
- (3) Notwithstanding that the effective increase in impervious coverage is under 1,000 square feet, stormwater infiltration improvements shall be provided in accordance with the standards applicable to minor developments as set forth in Section 21-42.1.f.2 of the Ordinance. The improvements shown on the plans shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit. Perc test results in support of the proposed stormwater infiltration measures shall be provided at that time;
- (4) The Applicants shall submit a tree protection, removal and replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (5) Soil from the pool excavation shall be removed from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (6) The Applicants shall adjust the proposed pool patio and pool equipment pad to conform with the minimum required 20-foot pool setback from the north side property line and shall revise the plans to reflect same;

- (7) The Applicants shall relocate the southerly portion of the proposed 6-foot-high vinyl fence so as not to extend into the front yard, or the front yard portion of the fence shall be revised to comply with front yard fence standards (maximum 4 feet high; minimum 50% open). The area considered "front yard" is based on the front setback of the dwelling. In this case, all area within 75.8 feet of the street right-of-way is considered front yard;
- (8) Prior to the issuance of a construction permit, the Pool Grading Plan shall be revised with regard to the proposed lot coverage, the lot area (43,600 square feet), the specified scale of the drawing (1"=20'), and the variance note under the Accessory Setbacks table;
- (9) The Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans;
- (10) The Applicants shall use the "best management practices" available when discharging pool water, consistent with the recommendations of the Environmental Commission attached to the January 28, 2021 Review Memorandum of the Township Planner;
- (11) The Applicants are advised that the Township Engineering Department may require additional grading information prior to the issuance of a permit;
- (12) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;
- (13) The Applicant shall revise the plans to address the two areas of proposed infiltration. One consists of a 24" perforated pipe wrapped in stone that appears to accept surface runoff. The other is labeled as a 'proposed NDS Flow Well Drywell.' There is a detail for the stone trench, but none for the NDS drywell. The infiltration system sizing calculations are included on the plan, but they only account for 725 square feet of additional impervious cover. After adjusting the proposed impervious lot coverage to exclude the block walls, the total net increase in impervious coverage is 976 square feet. Therefore the sizing calculations should be revised to account for an additional 251 square feet of impervious cover. The Applicants shall further revise the plans to include details of the proposed NDS drywell and same shall be subject to the review and approval of the Township Engineering Department;
- (14) The Applicants shall revise the plan to include spot grades for the proposed trench area to ensure that the anticipated volume provided is fully utilized, which will require the surface of the trench to be level on all sides;
- (15) The Applicants shall revise the impervious cover summary table to include the proposed pool equipment and generator pad if same is not already included;

- (16) The Applicants shall revise the plans to note that a soil log and permeability testing are required to confirm the adequacy of the in-situ soils and to ensure the system will comply with the New Jersey Best Management Practices regarding evacuation time and minimum distance between the bottom of the infiltration trench and seasonal high water table. If the in-situ soils prove to be inadequate for the current design, then the system may have to be redesigned to a gravity discharge system prior to submitting for building permits;
- (17) The Applicant shall revise the plans to relocate the pool equipment area that encroaches into the required pool setback;
- (18) The Applicants shall have the boulder retaining walls ultimately constructed certified for stability by a professional engineer licensed in the State of New Jersey prior to obtaining a final certificate of occupancy;
- (19) The Applicants shall revise the plans to include the proposed limit of disturbance. Irrespective of whether the 5,000 square foot disturbance area threshold is reached, at a minimum, soil erosion and sediment control measures shall be shown in accordance with the Township requirements and same shall be subject to the review and approval of the Township Engineering Department;
- (20) 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;
- (21) The Applicants shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
- (22) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

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

Those Opposed:        NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of March 3, 2021.





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

Dated: March 3, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**NESA and PATRICK ROSSI  
Case No. ZB21-003**

**RESOLUTION**

WHEREAS, **NESA and PATRICK ROSSI** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance relief in connection with the construction of (1) an 800 square foot inground swimming pool with adjoining 81 square foot spa and adjoining patio to the rear of the existing dwelling, (2) a 320 square foot partially enclosed pavilion/pool house on the patio next to the pool, and (3) an existing 8 foot high deer fence, same to be located on property identified as Block 2701, Lot 3 on the Tax Map, more commonly known as 14 Culberson Road (the “Property”):

1. A variance for a proposed lot coverage of 22.59%<sup>1</sup>, whereas the existing lot coverage is 17.27%, and the maximum permitted lot coverage in the R-6 Residential Zone is 18%, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
2. A variance for an existing 8 foot high deer fence located in the rear yard, whereas fences located in any side or rear yard shall not exceed 6 feet in height, pursuant to Section 21-16.2.b of the Land Development Ordinance; and
3. A variance for an existing 8 foot high deer fence and an existing approximately 6’ high solid/lattice PVC fence located on the property line, whereas no fence shall be located within 6 inches of any property line, pursuant to Section 21-16.2.e of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on February 3, 2021, 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

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<sup>1</sup> While the Applicants requested variance relief for a proposed lot coverage of 22.54%, the Board recognized that same did not include the additional coverage associated with the proposed 21 square foot pool equipment pad.

Applicants and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board reviewed the application and deemed it to be complete.
2. The Property is a deep lot located in the R-6 (3/4 acre) Residential Zone and consists of 0.99 acres (43,154 square feet) with frontage on Culberson Road. The Property is presently improved with a two-story, single-family residential dwelling, porch, patio, fire pit, and paved driveway.
3. The Applicants propose to construct a 20 foot by 40-foot (800 square feet) inground swimming pool with adjoining 9 foot by 9 foot (81 square feet) with an adjoining patio to the rear of the existing dwelling and a 16 foot by 20 foot (320 square feet) partially enclosed pavilion/pool house on the patio next to the pool. The Applicants also seek approval for an existing 8-foot-high deer fence and an existing approximately 6' high solid/lattice PVC fence that were installed without approval by the prior owners (not the Applicants) of the Property. The proposal increases the existing lot coverage by 2,296 square feet, such that Property will exceed the maximum permitted lot coverage by 1,981 square feet (4.59%). The proposed pool and spa account for 881 square feet (2.04%) of coverage, and the proposed patio accounts for 1,394 square feet (3.23%) of coverage.
4. The lot coverage and fence height and location variance relief is governed by the criteria of N.J.S.A. 40:55D-70(c).
5. The Applicants' proposal is depicted on a Pool Grading Plan prepared by David J. Schmidt, P.E., dated August 28, 2020, last revised January 7, 2021, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by Lee E. Amerspek, P.L.S., dated December 6, 2014, unrevised, same consisting of one (1) sheet and a compendium of four (4)

photographs of the Property and four (4) photographs of the existing fencing.

6. David Schley, P.P., A.I.C.P, the Board Planner, and Sam Koutsouris, P.E., the Substitute Board Engineer, both were duly sworn according to law.

7. Nesa and Patrick Rossi, the Applicants, having an address of 14 Culberson Road, Basking Ridge, New Jersey, were duly sworn according to law. Ms. Rossi testified that the Applicants are seeking approval to construct an inground pool with a spa, surround and pavilion and that the proposal requires relief for maximum lot coverage, maximum fence height in a side/rear yard and minimum fence setback from any property line. She testified that the fence had been installed by the previous owners and that she did not believe there had been any complaints about the fence. On questioning, Ms. Rossi testified that she had taken the photos submitted with the application in January of 2021 and confirmed that said photographs constituted an accurate depiction of the Property as is presently exists. Referring to Comment 2 of Mr. Schley's Review Memorandum dated January 28, 2021, Ms. Rossi confirmed that the proposed impervious coverage calculations would have to be revised to include the pool equipment pad.

8. On questioning as to whether the Applicants could remove any of the existing impervious coverage to reduce the overall amount of impervious coverage proposed, Ms. Rossi testified that the Applicants had conducted a review of the existing improvements and concluded that any modifications would not result in a meaningful reduction in coverage. She explained that the Applicants had not made any improvements to the Property since they had purchased it and that they hoped to construct an outdoor kitchen on the existing patio, which is why they did not want to reduce the size of said patio. In response to a suggestion that the patio be replaced with a wood deck, which would not be considered impervious coverage, Mr. Rossi testified that he did not know what type of material was under the patio and expressed concern that removal of the

patio could be difficult. On questioning, Ms. Rossi confirmed that the Applicants are not proposing to install a walkway to the pool. She further testified that the proposed improvements include the installation of an infiltration trench, which would be built around the perimeter of the patio, noting that, to date, the Applicants have not experienced any issues with stormwater runoff. On questioning as to whether the Applicants had discussed the proposal with their neighbors, Ms. Rossi advised that the Applicants had done so, and that they had not received any objections to same.

9. On questioning as to whether any trees would be removed, Ms. Rossi stipulated, as a condition of approval, that no trees would be removed and that, when the existing fence is replaced, the new fence will be conforming as to both height and location. She further stipulated that there would be no kitchen or living facilities in the proposed pavilion. Ms. Rossi explained that the pavilion is designed to accommodate a small bathroom, storage room and seating area.

10. The Applicants stipulated to complying with all of the comments and requirements set forth in Mr. Quinn's Review Memorandum dated January 28, 2021.

11. On questioning as to whether the Applicants intended to install additional landscape buffering, Mr. Rossi contended that there is adequate existing vegetation and testified that no additional landscaping is proposed. He explained that there is a line of trees to the south and that the line of sight from the west is obscured by an existing solid PVC fence. Mr. Rossi further explained that, to the east, there is an area of trees and brush.

12. James Molnar, having an address of 141 Spencer Road, was duly sworn according to law. He explained that his property is located to the rear and left of the Property. Mr. Molnar requested that the Applicants install additional landscaping because, currently, he is able to see directly into the Applicants' rear yard. The Applicants stipulated, as a condition of approval, to

providing additional landscape buffering, same to be subject to the review and approval of the Township Planner, Mr. Schley. Mr. Molnar commented that he had no objection to the height of the existing fence, since the fence itself is barely visible.

13. The Applicants stipulated, as a condition of approval, that the exterior of the proposed pavilion would be substantially similar in architectural style, color and materials to the exterior of the existing dwelling, and that the dimensions of the pavilion would be in accordance with the plans.

14. Mr. Molnar, having been previously sworn, testified that there is a significant amount of brush/screening around the Property, however, since the existing landscape buffering is reduced in areas between his property and the Applicants' Property, he requested additional landscaping, otherwise, he had no objection to the application for development.

### **DECISION**

15. 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 excess lot coverage and the existing nonconforming fence height and location under N.J.S.A. 40:55D-70(c)(2).

16. As to the positive criteria for "c(2)" or "flexible c" variance relief, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board notes that some of the excess lot coverage is a result of the extra driveway area necessitated by a side-load garage. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. The Board recognizes that the

proposed improvements will not be visible from the right-of-way and will be screened by the dwelling itself, as well as the existing and proposed landscape buffering. As such, the Board finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below.

17. As to the negative criteria required for variance relief pursuant to subsection c(2), the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal will be in character with the existing neighborhood and will not have a negative impact on the surrounding properties. In this regard, the Board recognizes that the pool and associated improvements will be sufficiently screened by the existing dwelling and the existing and proposed landscaping, and that the conditions stipulated to by the Applicants will further reduce the detrimental impact of the proposed improvements on adjacent properties. The Board notes that the adjacent neighbor, Mr. Molnar, requested that the Applicants install additional landscaping and that the Applicants stipulated to same, thereby alleviating the concerns of the most effected neighboring land owners. As to the substantial impairment prong of the negative criteria, the Board finds that the Applicants have demonstrated that the proposal is not inconsistent with the zone plan or zoning ordinances, particularly since pools are permitted accessory structures. The Board finds in this regard that the requested deviations are relatively modest in nature and certainly do not rise to the level of constituting a rezoning of the Property.

18. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested bulk variance relief pursuant to N.J.S.A.

40:55D-70(c)(2).

WHEREAS, the Board took action on this application at its meeting on February 3, 2021, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 3rd day of March, 2021, that the application of **NESA and PATRICK ROSSI**, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicants shall post sufficient funds with the Township to satisfy any deficiency in the Applicants' escrow account;
- (2) The Applicants shall pay all outstanding property taxes;
- (3) The Applicants shall revise the lot coverage calculations to include the additional coverage associated with the proposed pool equipment and same shall be reflected on the plans, all of which shall be subject to the review and approval of the Township Engineering Department;
- (4) The Applicants shall not remove any trees in connection with the proposed construction or, in the alternative, they shall submit a tree protection, removal and replacement plan, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (5) Soil from the pool excavation shall be removed from the Property unless the Applicants submit a grading plan showing where the soil will be used on the Property, subject to review and approval by the Township Engineering Department prior to any land disturbance;
- (6) Soil erosion and sediment control measures and stormwater infiltration measures shall be provided in accordance with Section 21-42.1.f.2 of the Ordinance. The measures shown on the plans shall be subject to further review and approval by the Township Engineering Department prior to issuance of a construction permit. Perc test results in support of the proposed stormwater infiltration measures shall be provided at that time;
- (7) Any lighting in the pool area shall be downward directed or appropriately shielded or recessed and shall comply with all applicable ordinance requirements so as not to be a nuisance to adjoining properties;



- (8) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission attached to the January 28, 2021 Review Memorandum of the Township Planner;
- (9) The Applicant shall revise the plans to include the height of the fencing that extends from each rear corner of the dwelling to each side property line as well as the height of the fencing along the west side property line, and same shall be subject to the review and approval of the Township Engineering Department;
- (10) When the existing fence is removed or replaced, any new or replacement fence shall conform with the Ordinance requirements as to fence height and fence location, and same shall be subject to the review and approval of the Township Engineering Department. The Applicants shall obtain any necessary permits prior to the installation of said replacement fence;
- (11) There shall be no kitchen in the proposed pavilion and same shall not be used as living quarters;
- (12) The maximum enclosed area of the pavilion shall be approximately 128 square feet (based on the Applicants’ representation that it will be no larger than 16 feet by 8 feet in floor area);
- (13) The Applicants shall submit a landscape plan, same to be subject to the review and approval of the Township Planner. The plan shall include additional landscape buffering between the Property and adjacent Lot 34 (to the rear) and, if necessary to supplement the existing buffering, between the Property and adjacent Lot 2 (to the east side);
- (14) The Applicants shall revise the plans to include additional design spot grades, including the proposed top of the infiltration trench elevation. In order to effect the whole design volume, the top of the trench elevation has to be level on all sides of the proposed pool and same shall be shown on the plans. Additionally, it is recommended that a bypass swale be shown on the uphill side of the pool to prevent unwanted runoff from the rear of the property from entering the infiltration system;
- (15) The Applicants shall revise the plans to include a note that soil log and permeability testing are required to confirm the adequacy of the in-situ soils and to ensure the system will comply with the New Jersey Best Management Practices regarding evacuation time and minimum distance between the bottom of the infiltration trench and seasonal high water table. If the in-situ soils prove to be inadequate for the current design, then the system may have to be redesigned to a gravity discharge system prior to submitting for building permits;

- (16) If not yet done, the Applicant shall install self-latching gates for the existing fence;
- (17) If the proposed limit of disturbance exceeds 5,000 square feet, the Applicants shall obtain certification from the Somerset-Union Soil Conservation District and same shall be noted on the plans. If under 5,000 square feet, soil erosion and sediment control measures shall be shown on the plans in accordance with Township requirements, same to be subject to the review and approval of the Township Engineering Department;
- (18) The exterior of the proposed pavilion shall be consistent as to the architectural design, materials, and color of the balance of the exterior of the existing dwelling;
- (19) The Applicants shall, if required by the Building Department, install footings for the proposed pavilion and revise the plans accordingly;
- (20) 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;
- (21) The Applicants shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
- (22) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variances granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

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

Those Opposed:        NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of March 3, 2021.



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

Dated: March 3, 2021

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ADRIANE SHAW  
Case No. ZB20-021**

**RESOLUTION – WITHDRAWAL**

WHEREAS, **ADRIANE SHAW** (the “Applicant”) sought minor subdivision approval and variance relief pursuant to N.J.S.A. 40:55D-70(d)(2) for the expansion of an existing nonconforming use (a dwelling unit in a barn) located on property designated as Block 3301, Lot 3, on the Township Tax Map, more commonly known as 490 South Maple Avenue; and

WHEREAS, the application, having been deemed complete, was scheduled for a public hearing on February 3, 2021; and

WHEREAS, by e-mail dated February 3, 2021, Frederick B. Zelle, Esq., on behalf of the Applicant, advised that the Applicant was no longer seeking d(2) variance relief and requested that the application be withdrawn without prejudice so that same can proceed to the Planning Board, which would have primary jurisdiction over such application as revised; and

WHEREAS, the Rules and Regulations of the Board provides, at Rule 2:4-7, that “any applicant may, at any time before the commencement of the hearing, voluntarily withdraw his or her application, in which case, the application shall be dismissed without prejudice. After commencement of a hearing, a voluntary dismissal may be taken only with the approval of the Board, in which case the Board shall dismiss the action with or without prejudice depending on the circumstances of the particular case”; and

WHEREAS, the Board Attorney advised the Board that applicable case law, specifically the decision in Sansone Oldsmobile-Cadillac, Inc. v. Shrewsbury Borough Bd. of Adj., 211 N.J. Super. 304 (Law Div. 1986), provides that, where, as here, an applicant seeks to withdraw a

pending application before a zoning board of adjustment without prejudice, the principles of N.J. Court Rule 4:37-1(b) should be applied, such that a request to grant a voluntary dismissal without prejudice during the pendency of an application is within the discretion of the Board and the Board may impose reasonable terms and conditions; and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 3<sup>rd</sup> day of March, 2021, that the request by the Applicant, for voluntary dismissal without prejudice of its application, as aforesaid, be granted, subject to the following condition:

The Applicant shall post funds with the Township sufficient to satisfy any and all deficiencies in the Applicant's escrow account and shall remain obligated to replenish that escrow account and otherwise reimburse the Township for all expenses incurred by it and its professionals in connection with the application.

ROLL CALL VOTE:

Those in Favor: Baumann, Breslin, Cambria, Genirs, Kraus, Pavlosky, 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 on March 3, 2021.



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

Dated: March 3, 2021