

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

**MINUTES v3**  
Regular Meeting  
July 7, 2021

## **CALL TO ORDER**

Chairman Breslin called the meeting to order at 7:36 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:       Baumann, Breslin, Genirs, Pavlosky, Pochtar, Tancredi  
Members Absent:        Agarwal, Cambria, Kraus  
Also Present:            Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
                                  Board Engineer, Sam Koutsouris, PE; Board Secretary, Cyndi Kiefer

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

## **APPROVAL OF MINUTES**

June 9, 2021 – Regular Session – On motion by Mr. Tancredi, seconded by Ms. Baumann, all eligible in favor and carried, the minutes were adopted as drafted. Abstentions: Genirs, Pavlosky, Pochtar (all absent)

June 17, 2021 – Special Session – On motion by Ms. Pochtar, seconded by Ms. Genirs, all eligible in favor and carried, the minutes were adopted as drafted.

## **APPROVAL OF RESOLUTIONS**

[RCP Realty Associates LLC](#); Block 3901, Lot 5; 31 Country Lane; ZB21-007 (approved) – Ms. Baumann moved approval of the resolution as drafted. Mr. Tancredi seconded.

Roll call:                Aye:                Baumann, Breslin, Tancredi  
                              Nay:                NONE  
                              Abstain:          Genirs, Pavlosky, Pochtar (all absent)

Motion carried.

[Colucci, Adam](#); Block 7002, Lot 42; 373 Lyons Road; ZB21-013 (approved) - Mr. Tancredi moved approval of the resolution as drafted. Ms. Baumann seconded.

Roll call:                Aye:                Baumann, Breslin, Tancredi  
                              Nay:                NONE  
                              Abstain:          Genirs, Pavlosky, Pochtar (all absent)

Motion carried.

[Naulty, David & Carrie](#); Block 6303, Lot 16; 1 Pin Oak Court; ZB21-012 (approved) - Ms. Genirs moved approval of the resolution as drafted. Ms. Pochtar seconded.

Roll call:                   Aye:                   Breslin, Genirs, Pavlosky, Pochtar, Tancredi  
                                  Nay:                   NONE  
                                  Abstain:             Baumann (recused)

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Lembo, Matthew J.; Block 708, Lot 5; 17 Tysley Street; Bulk Variances; ZB21-016

Present:                 Matthew J. Lembo, Applicant

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

Matthew J. Lembo, Applicant residing at 17 Tysley Street, testified that the proposed project, expansion of an existing 1.5 story dwelling primarily to renovate attic space into living space, requires relief for minimum required front yard setback and minimum required side yard setback (west side). He stated that the first floor renovations include closing in an existing open porch and creating 1.5 bathrooms and a master bedroom suite. Finally, he confirmed that the photos submitted with the application were taken by him in March or April of 2021 and that they accurately depict the property as it currently exists.

Mr. Lembo stipulated to the comments made in Mr. Schley's memo dated 06/25/2021. He testified that he had heard no negative comments about the project from adjacent property owners and he stipulated that all exterior materials would be similar in color, detail and style to the existing dwelling.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(1)" or "hardship" variances and for "c(2)" or "benefits outweigh detriments" variances. 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 variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Ms. Baumann seconded.

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

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Laird, T./Querrazzi, J.; Block 7801, Lot 20; 20 Lurline Drive; Bulk Variances; ZB21-017

Present:                 Frederick B. Zelle, Esq., Attorney for the Applicants  
                                  Catherine Mueller, PE, Engineer for the Applicants  
                                  Therese L. Laird, John Querrazzi, Applicants

Frederick B. Zelle, Esq., attorney with the firm of *Bisogno, Loeffler and Zelle LLC*, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He stated that the proposal, demolition of an existing house and construction of a new dwelling, requires variance relief for minimum front yard setback (steps only), minimum driveway setback, minimum lot width and minimum improvable lot area.

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

Theresa Laird, Applicant residing at 20 Lurline Drive, gave a brief description of the project, contending that building a new dwelling rather than updating the existing 1960's structure is a more viable option. Ms. Laird stated that the existing shed and pool will remain and that the pavers around the pool will be replaced with wood decking to help mitigate the increase in impervious coverage. She confirmed that the pictures submitted with the application were taken by her in March of 2021 and that they accurately depict the property as it currently exists. Finally, she stated that she had spoken to all the adjacent neighbors and had heard no negative comments.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions. Hearing none, that portion of the hearing was closed.

Catherine Mueller, PE, engineer with the firm of *Page Mueller Engineering Consultants PC*, Warren, NJ, was accepted by the Board as an expert in the field of civil engineering. She gave a brief description of the subject property noting that the location of the new dwelling had been moved forward (into the front yard setback) to provide safe circulation around the pool area and to accommodate the property's environmental constraints.

Ms. Mueller testified that because of the existing substandard turnaround area, the driveway has been moved closer to the side boundary line to provide a larger area for vehicular movement. She added that even though the proposed driveway now requires a variance, it is located next to the driveway on the adjacent property and hence would have no impact on that house. In response to the Board's concern that the turnaround areas of the driveways would be located next to each other, the Applicant stipulated to providing landscaping or fencing between the two areas to help mitigate the possibility of cars colliding if they are simultaneously using the turnaround areas.

Ms. Mueller responded to comments made in Mr. Schley's memo dated 06/25/2021 and in Mr. Quinn's memo dated 06/24/2021 to the satisfaction of the Board and stipulated as conditions of approval, to all items under her purview.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

Mr. Zelle summarized the testimony provided, opining that it satisfied both the positive and negative criteria required for variance approval.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for a "c(2)" or "benefits outweigh detriments" variance for the driveway setback deviation and for "c(1)" or "hardship" variances for the remainder of the variances. 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 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, Genirs, Pavlosky, Pochtar, Tancredi  
                                   Nay:                   NONE

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

DiNardo, Carmine & Cynthia; Block 8101, Lot 9; 282 Stonehouse Road; Bulk Variances; ZB20-017

Present:                   Frank J. Little, Jr., PE, PP, Engineer and Planner for the Applicants  
                                   Rone Lewis, Realtor for the Applicants  
                                   Carmine & Cynthia DiNardo, Applicants

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

Cynthia DiNardo, Applicant residing at 282 Stonehouse Road, testified that her husband, Carmine DiNardo, had built an enclosed porch over an existing patio at the rear of the existing dwelling without benefit of permit. When the decision was made to sell the house, the Township informed the Applicants that side yard, combined side yard and

rear yard setback relief is required if the enclosed porch is to remain. In addition to those variances, the Applicants are requesting a zone two waiver to eliminate the portion of the stream buffer occupied by the existing dwelling.

Frank J. Little, Jr., PE, PP, professional engineer and planner with the firm of *Owen, Little & Associates, Inc.*, Beechwood, NJ, was accepted by the Board as an expert in the fields of civil engineering and professional planning. He addressed comments made in Mr. Schley's memo dated 06/25/2021, Mr. Quinn's memo dated 06/24/2021 and the Environmental Commission's memo dated 10/04/2020 to the Board's satisfaction. In addition, he stipulated, as conditions of approval, to those items under his purview.

Rone Lewis, realtor with *Weichert Realtors*, Basking Ridge, NJ, and realtor for the Applicants was duly sworn. He confirmed that the photos submitted with the application were taken by him sometime in September of 2020 and that they accurately depict the property as it currently exists.

The Applicants confirmed that they would apply for the required construction permits for the enclosed porch.

Opining that the requested relief qualifies for "c(1)" or "hardship" relief because of the extensive environmental constraints on the subject property, Mr. Little stated that both the positive and negative criteria required for variance approval had been satisfied by the testimony provided.

Hearing no further questions or comments from the Board, the hearing was opened to the public for questions or comments.

Adrienne Bagnato, residing at 3152 Valley Road, adjacent to the subject property, voiced concerns about how future expansion of the building footprint would affect the adjacent wetlands and wildlife. She questioned whether the project would have been approved if the Applicants had applied for permits prior to construction and Mr. Warner advised that the Board would consider these variance requests as if the project had not been completed.

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

A straw poll indicated that the Board was not in favor of imposing a condition prohibiting heat or air-conditioning in the enclosed porch.

After deliberating, the Board concluded that the Applicants had satisfied the positive and negative criteria required for "c(1)" or "hardship" variances. 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 variance relief and to grant a zone two waiver as requested by the Applicants subject to the conditions stipulated to by the Applicants and as stated during deliberations. Ms. Pochtar seconded.

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

Motion carried.

### **COMPLETENESS AND PUBLIC HEARING**

Trinks, Uwe; Block 11601, Lot 30; 50 Long Road; Bulk Variances; ZB21-018

Present: Uwe Trinks, Applicant

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

Uwe Trinks, Applicant residing at 50 Long Road, stated that he is seeking approval to construct a basement level garage addition with a deck on top and an expanded driveway, to the front of a two-story addition approved by the Board in 2020 (ZB20-012) and currently under construction. The proposal would require relief for side yard, combined side yard and rear yard setback deviations. He testified that because of the topography and shape of the subject property, any improvements require variance relief and that the proposed garage's encroachment into the

setbacks is less than that of the existing dwelling. Mr. Trinks confirmed that the pictures submitted with the application were taken by him in May of 2021 and that they accurately depict the property as it currently exists.

Mr. Trinks addressed the comments made in Mr. Schley's memo (06/25/2021) and Mr. Quinn's memo (06/24/2021) to the Board's satisfaction and stipulated as conditions of approval, to all applicable items in both memos. He also confirmed that all conditions stated in the previous approval (ZB20-012) remain in effect.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Hearing none, that portion of the hearing was closed.

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

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

Motion carried.

\* \* \* *The Open Session was recessed at 9:55 PM and reconvened at 10:01 PM.* \* \* \*

#### **COMPLETENESS AND PUBLIC HEARING**

Porr, Michael & Wendy; Block 1611, Lot 48; 10 Prospect Avenue; Bulk Variances; ZB21-023

Present:                   Frederick B. Zelle, Esq., Attorney for the Applicants  
                                   Rudolf L. Holzmann, PE, Engineer for the Applicants  
                                   Michael and Wendy Porr, Applicants

Frederick B. Zelle, Esq., attorney with the firm of Bisogno, Loeffler and Zelle LLC, Basking Ridge, NJ, entered his appearance on behalf of the Applicants. He stated that the proposed project, construction of an in-ground pool with a surrounding wood deck to the rear of the existing dwelling, requires relief for minimum side yard setback (pool equipment) and for maximum allowable lot coverage. In addition, the Applicants were seeking relief (minimum side and rear yard setbacks) for an existing shed. Noting that the subject property is undersized for the zone, he stated that the existing impervious coverage exceeded that which is allowed prior to the Applicants' purchase of the property and that the bulk of the new coverage is pool surface which is considered stormwater neutral.

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

Michael Porr, Applicant residing at 10 Prospect Avenue, gave a description of the property and contended that if the project is approved, no additional buffering should be required since the existing landscaping is sufficient to provide privacy for the adjacent neighbors. He testified that he had installed the shed shortly after closing on the property in 2007 and did not realize that a permit was required or that it was located in a nonconforming location. He noted that he had not received any complaints from neighbors and that it is well screened by vegetation and a solid fence.

Mr. Porr further testified that he discovered that the existing impervious coverage exceeded the maximum allowable when he sought to expand a patio in 2018. At that time, enough existing impervious coverage was removed so that there was a net zero increase. With this application, he proposed to remove a portion of the driveway located near the garage and to use wood decking around the pool as opposed to pavers in an effort to get as close to a zero net increase in coverage as possible. Finally, he stated that the pictures submitted with the application were taken by him in the spring of 2021 and that he had heard no negative comments about the project from the neighbors.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions. Hearing none, that portion of the hearing was closed.

Rudolf L. Holzmann, PE, engineer with the firm of *Yannaccone, Ville & Aldrich LLC*, Chester, NJ, was accepted by the Board as an expert in the field of civil engineering. He gave a brief description of the subject property, noting that there are no environmental constraints and reiterating that the existing vegetation would provide adequate buffering for both the shed and the proposed pool. He testified that the pool would be surrounded by wood decking, flush with the pool coping, with uncompacted gravel underneath. He stipulated that the deck will be open-joint and that it would be raised above grade to allow for water run-off. He concluded by stating that if the pool surface is removed from the coverage calculation, the net increase would be just over 40 square feet.

Mr. Holtzmann addressed the comments made in Mr. Schley's memo (06/25/2021) and Mr. Quinn's memo (06/24/2021) to the Board's satisfaction and stipulated as conditions of approval, to all applicable items.

Mr. Schley noted that the existing coverage in coverage on the subject property (without the shed) was determined to pre-exist the zoning change which established maximum permitted coverages.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions. Hearing none, that portion of the hearing was closed.

Mr. Porr offered to remove another small area of the driveway however, the Board felt that removing small areas in the front yard would not create more "green" space in the back yard or solve the lack of "openness" and that the proposed additional coverage presented a "massing" issue. Mr. Zellely reiterated that the existing coverage is pre-existing and therefore grandfathered, adding that keeping the mechanicals and shed off to the side would help to maintain open area. He stated that the pool would be completely hidden and that the project presented no negative impact to the neighborhood. A straw poll indicated that the Board was not in favor of imposing a condition requiring the Applicants to remove the additional portion of the driveway.

Both Chairman Breslin and Mr. Koutsouris agreed that the project presented no stormwater management issues.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for comments. Hearing none, that portion of the hearing was closed.

Removal of part of the decking around the pool was offered by the Applicants however a straw poll indicated that the Board did not feel that it would alleviate the issue since open decks are not considered as impervious coverage. Instead, the Board suggested that the Applicants consider reducing the size of the pool or the existing patio.

Mr. Zellely asked that the Board conduct two votes: one for the shed and one for the pool and mechanicals.

Mr. Tancredi moved to deem the application complete and to grant the application for variance relief ("c(1)" or "hardship") for the pool and mechanicals subject to the conditions stipulated to by the Applicants. Ms. Baumann seconded.

Roll call:                   Aye:                   Baumann, Breslin, Tancredi  
                                  Nay:                   Genirs, Pavlosky, Pochtar

Motion failed thus constituting a statutory denial.

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

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

Motion carried.

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

A suggestion was made that the meetings start earlier to accommodate the heavier application load. Ms. Kiefer offered to poll the Board on the subject and report back at the next meeting.

**ADJOURN**

Moved by Ms. Baumann, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 11:46 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 08-04-2021*

07/27/2021 dssw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**RCP REALTY ASSOCIATES, LLC  
Case No. ZB21-007**

**RESOLUTION**

WHEREAS, **RCP REALTY ASSOCIATES, LLC** (the “Applicant ”), has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following bulk variances in connection with (1) the removal of an existing, dilapidated 1.5-story dwelling, and (2) the construction of a two-story dwelling with attached two-car garage, on property identified as Block 3901, Lot 5 on the Tax Map, more commonly known as 31 Country Lane (the “Property”):

- (1) A variance for a lot area of 0.847 acres (36,881 square feet), whereas the minimum required lot area in an R-2 residential zone is 2 acres (87,120 square feet), pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (2) A variance for an improvable lot area of zero (0) square feet, whereas the minimum required improvable lot area in an R-2 residential zone is 22,000 square feet, pursuant to Section 21-10.4(b) and Table 401-A of the Land Development Ordinance;
- (3) A variance for a proposed front-yard setback of 52.8 feet, whereas the existing front-yard setback is 61.8 feet, and the minimum required front-yard setback in an R-2 residential zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance;
- (4) A variance for a proposed rear-yard setback of 28.8 feet, whereas the existing rear-yard setback is 45.5 feet, and the minimum required rear-yard setback in an R-2 residential zone is 100 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance; and
- (5) A “planning” variance for a proposed dwelling fronting on a private street, whereas all developable lots shall have frontage on a public street, pursuant to N.J.S.A. 40:55D-35 and Section 21-21.2 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on June 9, 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 Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board reviewed the application and deemed it complete.
2. The Property is an undersized and somewhat environmentally constrained lot fronting on Country Lane. The Property is significantly less than one-half of the required lot area and has no improvable lot area (i.e., no building envelope). The Property is currently improved with a dilapidated 1.5-story dwelling and associated improvements. The Applicant proposes to raze the existing dwelling and construct an approximately 3,830 square foot, two-story dwelling with an attached two-car garage.
3. The Applicant's proposal is depicted on a Lot Development Plan prepared by Christian M. Kastrud, P.E., dated January 21, 2021, unrevised, same consisting of one (1) sheet; Architectural Plans prepared by John James, R.A., dated January 15, 2021, unrevised, same consisting of six (6) sheets; an Architectural Rendering also prepared by Mr. James, dated January 15, 2021; and a Topographic Survey prepared by John C. Ritt, P.L.S., dated August 14, 2020, last revised September 21, 2020, same consisting of one (1) sheet. The Applicant also submitted a Wetlands Delineation and Plan Review prepared by David C. Krueger, Environmental Technology Inc., dated January 8, 2021; and a compendium of four (4) photographs of the Property.
4. The requested variances for the lot area, improvable lot area, and front- and rear-yard setback deviations are all governed by the criteria of N.J.S.A. 40:55D-70(c). The requested planning variance for the location of the dwelling such that it does not front on a public street is governed by N.J.S.A. 40:55D-35.

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

6. Frederick Zelle, Esq., of Bisogno, Loeffler & Zelle, entered his appearance on behalf of the Applicant. Mr. Zelle explained that the Applicant is seeking to raze the existing dwelling and construct a new single-family dwelling. He further explained that multiple Ordinance changes resulted in the Property becoming non-conforming as to lot area and improvable lot area, and also increased the required front- and rear-yard setbacks. Mr. Zelle noted that the Applicant is also seeking relief pursuant to N.J.S.A. 40:55D-35 and the Ordinance, because the Property is located on a private street, rather than a public street.

7. William S. Hocking, Principal of the Applicant LLC, having an address of 30 Country Lane, was duly sworn according to law and testified as a fact witness. He explained that he, his wife, and their two sons reside across the street from the Property, and that they have lived there since 1986. Mr. Hocking testified that the existing dwelling on the Property is uninhabitable and has been unoccupied since a severe storm damaged it in December of 2019. He explained that, since they lived on Country Lane for approximately 35 years, he and his wife thought that purchasing the Property would give them an opportunity to determine what type of development would be located across the street from their house. Mr. Hocking testified that he investigated whether the existing dwelling could be renovated rather than demolished, but that same was not possible.

8. Mr. Hocking testified that there is a sewer line, as well as a natural gas line, running to the Property, but that there is not a public water connection. He explained that the existing well is located under the floor of the existing dwelling and, therefore, a new well must be located in the front yard. Mr. Hocking testified that the proposed dwelling will have a similar footprint to, and

will be less than 1,000 square feet larger than, the existing dwelling. He explained that the additional square footage will allow the Applicant to construct a second floor above the garage.

9. On discussion of the Property's location on Country Lane, a private street, Mr. Hocking explained that Country Lane is not a public road, it is untaxed, and it is not owned by the adjacent property owners. He further explained that he and the other residents on Country Lane formed an informal homeowners' association to pay for maintenance expenses, such as re-grading the street and snowplowing. Mr. Hocking noted that, although Country Lane is not a public road, it is fairly wide and can accommodate two vehicles passing each other.

10. On discussion of the June 2, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley, and the June 7, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicant stipulated, as a condition of approval, to complying with all of the comments and requirements set forth therein. On discussion of the April 28, 2021 Review Memorandum prepared by the Environmental Commission, the Applicant stipulated to closing the existing well, providing dust control measures during demolition activity, and that the proper precautions will be taken regarding the investigation and disposal of underground tanks, asbestos, and lead paint. On questioning, Mr. Hocking testified that "buy/sell" letters were sent to the adjacent property owners at 220 Lake Road, 230 Lake Road, 17 Country Lane, and 35 Country Lane, but that none of the recipients expressed a desire either to sell a portion of their property to the Applicant, or to purchase the Property, in order to make the Property conform, or more nearly conform, with the Ordinance requirements as to lot area, improvable lot area, and front- and rear-yard setbacks.

11. On questioning as to the photographs submitted with the application materials, Mr. Hocking testified that he had taken the photographs within the past year and he confirmed that they constitute accurate depictions of the Property as it presently exists. On questioning as to

whether Country Lane is wide enough to accommodate emergency vehicles, Mr. Quinn explained that, generally, a width of 18 feet is the minimum width for fire truck circulation/access and he noted that the neighborhood has existed for many years without issue. Mr. Hocking confirmed that fire trucks and ambulances have navigated Country Lane without issue over the years.

12. On questioning as to whether the existing informal association organized for the maintenance of Country Lane is sufficient, Mr. Zellely advised that the Applicant is not creating any new lots, and he contended that the Applicant should not be required to formalize the existing agreement. Mr. Hocking confirmed that the existing association will remain and that the Applicant will provide information to the purchaser of the Property regarding same. On further discussion, the Applicant stipulated, as a condition of approval, to including a statement in the deed and all sales disclosures regarding the maintenance obligations related to Country Lane.

13. John James, R.A., having an address of 11 Inwood Place, Maplewood, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Mr. James testified that Mr. Hocking had retained him to design a beautiful dwelling that would be consistent with the existing neighborhood. Mr. James concurred that the existing dwelling is not habitable and cannot be renovated, because it lacks electricity, has holes in the roof and significant water damage, and is inhabited by animals. Referencing the renderings and elevations submitted with the application materials dated January 15, 2021, Mr. James testified that the proposed dwelling utilizes the existing footprint and expands it to the right and rear of the dwelling. He explained that there are wetlands to the left of the dwelling and that the Applicant did not want to disturb that area.

14. Referencing the floor plans dated January 15, 2021, Mr. James described the layout of the dwelling. He testified that it is a two-story dwelling with an attic and a basement. Mr. James

testified that the first floor has an open floorplan that includes a living room, dining room or study, kitchen, family room, mudroom with bathroom/powder room and a two-car garage. He testified that the second floor includes a master suite, three bedrooms, and two bathrooms. Mr. James explained that the attic could be used as a playroom or home office (not a bedroom), but that the Applicant was not proposing to construct such improvements at this time. He testified that the proposal also includes a walkout basement that leads to an outdoor patio/deck. Mr. James noted that the Applicant intended to install plumbing in the basement should the future purchaser wish to add a bathroom. Referencing the elevations, Mr. James explained that the dwelling includes gables and a bay window to provide visual interest. The Applicant stipulated, as a condition of approval, that the proposed deck would remain an open deck. The Applicant further stipulated to installing the required waterproofing to comply with building code requirements.

15. On questioning, Mr. James testified that the Applicant proposed a front-loading garage because a side-loading garage would require relocation of the existing driveway, which would, in turn, increase the amount of disturbance and the impervious coverage. On questioning as to the proposed rear-yard setback deviation, Mr. James advised that the primary expansion of the dwelling into the rear yard is associated with the installation of the deck. He explained that the proposed dwelling will be approximately 400 feet from the adjacent dwelling to the rear, and it will be buffered by the wetlands area between the properties. On questioning as to whether the elevations and renderings submitted with the application represent the dwelling that will be constructed, Mr. James stipulated that the proposed dwelling will be substantially similar to the dwelling depicted thereon.

16. On discussion of whether the dwelling would be useful to the Fire Department for conducting drills, Mr. Schley suggested that the Applicant not be required to offer the dwelling to

the Fire Department for said purpose given the risks to the firefighters associated with the deteriorated condition of the dwelling.

17. On questioning, Mr. James testified that, if necessary, the roof could be reduced to ensure that the attic qualifies as a half-story. On questioning as to the proposed building materials, Mr. James explained that, like the existing dwelling, it will consist of predominantly clapboard siding with an asphalt shingle roof and carriage style doors. He opined that it will be consistent with the existing neighborhood, which includes both 1.5 story dwellings and two-story dwellings. On discussion of the proposed tree removal, Mr. James explained that the Applicant is only removing the trees that are close to the dwelling and will be damaged by the proposed construction. He further explained that the Applicant is removing approximately 15% of the existing trees and noted that it is a heavily wooded lot. Mr. Quinn reminded the Applicant that, if the proposal results in an increase of 1,000 square feet or more of impervious coverage, the Applicant will be required to install stormwater measures, such as drywells, and Mr. James acknowledged same on behalf of the Applicant.

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

### **DECISION**

19. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has satisfied its burden of proving an entitlement to the requested bulk variance relief for the lot area, improvable lot area, and front- and rear-yard setback deviations, under both of the alternative bases set forth in N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2). The Board further finds that the Applicant has demonstrated an entitlement to the requested “planning variance” pursuant to N.J.S.A. 40:55D-36 and Section 21-21.2 of the Ordinance.

**The c(1) Positive Criteria:**

20. As to the positive criteria for subsection “(c)(1)” or “undue hardship” variance relief, the Board finds that the Applicant has satisfied its burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, it as the purchaser of the Property, as a result of unique conditions relating to the Property. The Board finds that the Property is a significantly undersized and shallow lot, with environmental constraints (wetlands and wetland transition areas) located in the southerly portion of the Property.

21. The Board recognizes that, based on Township records, the Applicant’s 36,881 square foot lot area become nonconforming in 1954, when the minimum required lot area increased from 20,000 square feet to 40,000 square feet. The lot area became further nonconforming in 1990, when the current minimum required lot area of two (2) acres was established. Additionally, the minimum improvable lot area requirement of 22,000 square feet was adopted in 2006 with the purpose of ensuring that adequate area suitable for development (i.e. free of environmental or other constraints) is provided within the building envelope on each lot. Since the depth of the Applicant’s lot (east to west) is less than 200 feet (it ranges from 123 feet to 150 feet), the minimum required 100-foot front yard and 100-foot rear yard result in no building envelope. Additionally, 5,968 square feet of the Property on the far south side of the lot is a wetlands/wetlands transition area.

22. The Board further recognizes that the Applicant sent “buy/sell” letters to the adjacent property owners in an effort to render the lot conforming, or more conforming, with the Ordinance requirements, but received no affirmative response to same. As such, the Board finds that the Applicant has established that no additional land is available for purchase which would bring the Property into, or significantly closer to, conformity with the district standards of the

Ordinance. The Board further finds that the hardships that would be incurred by the Applicant if the zoning requirements were to be strictly enforced, would not be self-created by the Applicant or any predecessor-in-title. Accordingly, the Board finds that the Applicant has satisfied the positive criteria for subsection (c)(1), or undue hardship, variance relief, for all of the bulk deviations.

**The c(2) Positive Criteria:**

23. As to the positive criteria for subsection “(c) (2)” or “flexible c” variance relief for all of the bulk deviations, the Board finds that the Applicant has demonstrated that the proposed development will serve multiple purposes of zoning, as set forth in Section 2 of the Municipal Land Use Law (“MLUL”). These benefits include providing a desirable visual environment, providing adequate light, air and open space, upgrading the housing stock, promoting the general welfare, and enhancing the visual compatibility of the Property with adjoining properties. In this regard, the Board recognizes that the proposed dwelling, as compared to the existing dilapidated dwelling, will improve the appearance of the Property and the surrounding neighborhood, provide aesthetic and property value benefits to the neighborhood, and otherwise upgrade the housing stock in the community. The Board further finds that the benefits to be derived from the proposed development will substantially outweigh the relatively modest detriments associated with the variance relief sought, particularly given the conditions stipulated to by the Applicant, as set forth below.

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

**The Negative Criteria:**

25. Next, the Board finds that the Applicant has satisfied the negative criteria for all of the requested bulk variance relief. In this regard, the Board finds that the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board recognizes that the Applicant is the owner of immediately adjacent property and has designed the proposed improvements to be consistent with the neighborhood. In this regard, the Board notes that the Applicant is constructing the dwelling in a location similar to the location of the existing dwelling so as to reduce land disturbance. Additionally, the Board recognizes that no member of the public objected to the Applicant's proposal. As to the substantial impairment prong of the negative criteria, the Board recognizes that single-family dwellings are a permitted use in the R-2 Zone and that granting the requested bulk variance relief certainly does not rise to the level of a rezoning of the Property. As such, the Board finds that the Applicant has satisfied both the positive and negative criteria for all of the bulk deviations under both subsection c(1) and subsection c(2).

**The "Planning" Variance:**

26. Finally, the proposal requires a variance from Section 21-21.2 of the Land Development Ordinance and N.J.S.A. 40:55D-35 because the existing lot does not have frontage on a public street.

27. N.J.S.A. 40:55D-35 provides, in relative part, that no permit for the erection of any building or structure shall be issued unless the lot abuts a public street giving access to such proposed building or structure. Similarly, Section 21-21.2.a of the Land Development Ordinance requires that all lots have frontage on a public street, unless development occurs under the Planned

Residential Development (PRD) provisions or unless specifically provided for elsewhere in this section of the Ordinance.

28. Pursuant to N.J.S.A. 40:55D-36, the Board is authorized to provide relief from the public street frontage requirement where same would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to a street. Under such circumstances, the Board may give relief from the application of N.J.S.A. 40:55D-35 and “direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that would protect any future street layout shown on the official map or on a general circulation plan element of the municipal Master Plan....”

29. The Board recognizes that the MLUL provisions and the corresponding municipal ordinance provisions are designed to protect against the construction of buildings on lots to which emergency vehicles cannot gain entrance. The Board further recognizes, however, that governing statutory and case law permit applicants to be relieved from the public street frontage requirement where adequate access for emergency vehicles is assured by some lesser means. See, Kligman v. Lautman, 53 N.J. 517 (1969).

30. Here, the Board recognizes that the Country Lane neighborhood has existed for many years without issue as to emergency vehicle access and, as testified to by Mr. Hocking, Country Lane has been able to accommodate emergency vehicles, including fire trucks. The Board finds that the public street frontage requirement would entail practical difficulties and undue hardship on the Applicant. Moreover, the Board finds that, in light of the conditions stipulated to by the Applicant herein, the requested relief from the public street frontage requirement of the MLUL and the Land Development Ordinance is warranted in this case. The Board finds that the

development as proposed will provide adequate access for emergency vehicles necessary for the protection of health and safety, and also will protect any future street layouts shown on the Master Plan. As such, the Board finds that the Applicant has demonstrated an entitlement to the requested “planning” variance relief for the lack of frontage on an abutting public street.

WHEREAS, the Board took action on this application at its meeting on June 9, 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 7th day of July, 2021, that the application of **RCP REALTY ASSOCIATES, LLC**, for variance relief as aforesaid, be and is hereby granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant’s escrow account;
2. The Applicant shall disclose the maintenance obligations relating to the maintenance of Country Lane in all marketing materials and disclosures provided to potential purchasers;
3. The Applicant shall prepare a deed restriction regarding the maintenance obligations of the homeowners relating to Country Lane, and same shall be subject to the review and approval of the Board and/or Township Attorney. Once approved, the Applicant shall include said deed restriction in the deed conveying the Property to the next owner;
4. The proposal results in an increase of 991 square feet of impervious surface area, making the project exempt from the stormwater infiltration requirements of Section 21-42.11. Prior to issuance of a construction permit, the floor plans and elevations shall be revised to reflect that the proposed rear deck is an “open deck”, i.e. a raised platform not enclosed by walls, glass, screens, roofing or otherwise except for railings which are no less than 50% open, as defined in Section 21-18A.1. Otherwise, the project would not be exempt from stormwater requirements and the lot development plan would have to be revised accordingly, subject to review and approval by the Township Engineering Department prior to issuance of a construction permit;

5. The Applicant shall remove dead trees within the limit of disturbance and 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;
6. The wetlands and wetlands transition area shall be contained within a wetlands conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney and shall be executed by the Applicant and recorded with the Somerset County Clerk prior to issuance of a construction permit. The easement boundary shall be delineated with Township standard markers, which shall be bonded prior to issuance of a construction permit and installed prior to issuance of a certificate of occupancy;
7. All proposed utility services shall be underground and routed to minimize disturbance to existing trees;
8. A completed Township standard lot coverage disclosure form shall be submitted prior to issuance of a construction permit;
9. A development fee shall be required in accordance with Section 21-86 of the Ordinance;
10. The Applicant shall revise the lot development plan to depict the one-foot contours provided on the Survey prepared by James P. Deady Surveyor, LLC;
11. The Applicant shall ensure that all land grading around the dwelling provides a minimum 2% slope to carry surface water away from the dwelling and shall provide additional spot grades and revisions, as necessary, to demonstrate same;
12. The dwelling's finish floor is set at one foot above the garage sill elevation. Based on the current grading depicted, the Applicant is advised that waterproofing may be required around the portion of the dwelling adjacent to the garage in order to comply with the building code requirements;
13. The Applicant's engineer shall revise the lot development plan to include the limit of disturbance, provide the necessary soil erosion and sediment control measures, and to note that the Applicant shall obtain Certification by the Soil Conservation District, as necessary. If Soil Conservation District certification is not required, soil erosion and sediment control measures shall be in accordance with Section 21-42.11 of the Ordinance, and same shall be subject to review and approval by the Township Engineering Department prior to issuance of a construction permit;
14. The Applicant shall close and decommission the existing well in accordance with applicable regulations;
15. The Applicant shall implement dust control measures during demolition activities;

16. The Applicant shall ensure that proper precautions are taken regarding the investigation for, and removal of, underground tanks, existing asbestos and lead paint;
17. If the Applicant's proposal is such that the attic is over a half-story, the Applicant shall revise the plans such that the attic will qualify as a half-story, same to be subject to the review and approval of the Township Zoning Officer;
18. 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;
19. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
20. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor:                   Baumann, Breslin, Tancredi

Those Opposed:                   NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on July 7, 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: July 7, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ADAM COLUCCI  
Case No. ZB21-013**

**RESOLUTION**

WHEREAS, **ADAM COLUCCI** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variances in connection with the construction of an approximately 12 foot by 28 foot (305 square feet), oval-shaped swimming pool and 669 square foot patio surround, and the construction of three (3) retaining walls ranging in height from 3 feet to 7 feet tall to accommodate re-grading, all of which will be located to the rear of the existing dwelling, on property identified as Block 7002, Lot 42 on the Tax Map, more commonly known as 373 Lyons Road (the “Property”):

1. 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 (the “Ordinance”); and
2. A variance for the disturbance of approximately 2,908 square feet of steep slopes greater than 25%, whereas no such disturbance is permitted, pursuant to Section 21-14.2.b.3 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on June 9, 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 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 consists of a 1.622 acre lot located in the R-4 (1 acre) Residential

Zone with frontage on Lyons Road. The Property is presently improved with a one-story single-family dwelling, wood deck, slate patios, covered porch, and macadam driveway.

3. The Property also has a one-story frame apartment over the existing garage which was previously conditionally approved by the Board of Adjustment in 1983 (the "1983 Approval") for use as a living quarters by domestic or nursing help working for the prior owners of the Property. Condition (d) of the 1983 Approval provides that "When both of the Applicants cease to reside in the primary dwelling, the right under this variance to use the second story of the garage as an apartment . . . shall cease and terminate." Since both of the prior owners no longer reside on the Property, the approval for the apartment has terminated. As such, the current Applicant shall be required to, within 60 days, (1) file an application to obtain approval to continue the use of the space above the garage as an apartment, or (2) discontinue the residential use of the apartment and decommission same. However, the current application relates solely to the proposed construction of the pool and pool surround, and the associated retaining walls.

4. The Applicant proposes to construct an approximately 12 foot by 28 foot (305 square feet) oval shaped inground swimming pool with a 669 square foot patio surround, and three (3) retaining walls ranging in height from 3 feet to 7 feet tall to create a level area for the pool/patio in the steeply sloped rear yard. The Applicant also seeks approval for the disturbance of 2,908 square feet of steep slopes greater than 25%, which disturbance has already occurred.

5. The Applicant's proposal is depicted on a Variance Plan prepared by Christian M. Kastrud, P.E., dated February 4, 2021, unrevised, same consisting of two (2) sheets titled "Pool Grading Plan" and "Slope Analysis & SCD Plan". The Applicant also submitted a Partial Topographic Survey prepared by John C. Ritt, P.L.S., dated November 5, 2020, unrevised, same

consisting of one (1) sheet and an information sheet for the proposed retaining wall system.

6. The steep slope disturbance 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 Thomas Quinn, P.E., C.M.E, the Board Engineer, were both duly sworn according to law.

8. Adam Colucci and Elizabeth Shirley, having an address of 373 Lyons Road, were duly sworn according to law. Mr. Colucci testified that he is seeking variance relief for the disturbance of steep slopes and for a pool that is not located to the rear of the dwelling on adjacent Lot 41. He stipulated, as a condition of approval, that he will either apply for Board approval or remove/decommission the apartment within 60 days of the Board's decision on this application.

9. Mr. Colucci addressed the comments and requirements set forth in the Review Memorandum prepared by the Board Planner, Mr. Schley, dated June 2, 2021. As to the proposed pool location, Mr. Schley explained that the Property is encumbered by steep slopes and complying with the pool location requirement would increase the overall disturbance of said slopes. He explained that there is a flat area on the Property, but that it is approximately 170 feet from the dwelling and that said location would be impractical. On discussion of the proposed buffering, Mr. Colucci described the existing landscape and introduced four (4) photographs of the Property into evidence:

- a. **Exhibit A-1**: Photograph of Lot 41 as viewed from the existing driveway;
- b. **Exhibit A-2**: Photograph of Lot 41 as viewed from the proposed pool location;
- c. **Exhibit A-3**: Aerial photograph of the Property taken with a drone; and
- d. **Exhibit A-4**: Photograph of the disturbed steep slopes.

10. On discussion of the disturbance of steep slopes, Mr. Schley explained that, once steep slopes are disturbed, the primary concerns are water quality and soil erosion. He explained that disturbed slopes should be stabilized and vegetated to reduce the likelihood of erosion and sedimentation. On discussion of whether the Applicant could simply restore the slopes that were disturbed, Mr. Schley advised that the damage had already been done and, therefore, stabilization measures are necessary. Mr. Schley and Mr. Quinn both commented that the contours shown on the plans should be revised so as to be consistent with the topographic survey submitted with the application materials, and the Applicant stipulated to having his engineer do so.

11. On discussion of the existing landscaping, Mr. Colucci explained that there was a storm approximately three years ago that damaged a number of trees, and that those trees had already been removed and he only removed the stumps that remained. He further explained that he had removed some trees, but that they were only 4" to 6" in diameter. Mr. Colucci testified that he planted approximately 60 arborvitaes in October of 2020, but that he stipulated, as a condition of approval, that the overall landscaping would be subject to the review and approval of the Township Engineering Department and/or Township Planner. Mr. Colucci stipulated that all proposed lighting would be downward directed to avoid light spillage onto adjacent properties.

12. On questioning, Mr. Colucci testified that the pool equipment will be located in the southwesterly corner of the Property, near the detached garage, and that it will be screened by trees and bushes. Mr. Colucci stipulated, as a condition of approval, to complying with all of the items set forth in Mr. Schley's Review Memorandum.

13. On discussion of the existing apartment over the detached garage, Mr. Schley explained that, in 1983, the Board granted a temporary approval to the prior owners of the Property

so that their caregivers could stay on the Property. The 1983 Approval included a condition limiting the use of the apartment to said caregivers, and only while at least one of the prior owners resided in the primary dwelling. Mr. Schley explained that, since the apartment approval had expired on the change in ownership, the Applicant should either seek variance approval to maintain the apartment (residential) use or terminate said use and obtain a permit and remove/decommission said apartment. He referred to the Applicant's letter to the Board Chair dated April 28, 2021, wherein the Applicant requested that the Board allow him 60 days after the Board's decision on the variances for the pool project to decide on a course of action relative to the apartment. Mr. Schley further explained that the Applicant should not be allowed to begin any work relating to the pool project (except for slope stabilization purposes) until the Applicant either obtained approval for the apartment (residential) use or obtained the necessary permits to remove/decommission same. Mr. Schley explained that the Applicant could begin constructing the retaining walls (slope stabilization) as soon as he obtained permits to do so, which should be as soon as possible and not more than 60 days after the Board's decision on the variances for the pool project. On questioning as to how the apartment space was currently being used, Mr. Colucci advised that the apartment is currently occupied by a friend. Mr. Schley explained that the use of the currently unapproved apartment is an enforcement issue, and he reminded Mr. Colucci that he needs to address the apartment use within 60 days of the Board's decision.

14. On questioning as to how so much land disturbance had taken place without the Applicant obtaining permits, Mr. Colucci explained that, previously, there was an old railroad tie wall, but that the wall gave out, resulting in dirt spilling onto the driveway. He further explained that he initially considered simply installing a new retaining wall, but that his fiancé suggested

they consider installing a pool. Mr. Colucci testified that he did all of the soil movement work himself. He explained that he did not realize the magnitude of the project, or the need for land use board approval, until after he had attempted to repair the retaining wall.

15. On discussion of the June 7, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicant stipulated, as a condition of approval, to complying with all of the comments and recommendations set forth therein. On discussion of the proposed retaining walls, Mr. Quinn advised that the design of the walls would have to be certified by a New Jersey licensed engineer and submitted to the Township Engineering Department for review and approval prior to construction. He further advised that if the Applicant's proposed disturbance exceeds 5,000 square feet, certification from the Soil Conservation District will be required, and the Applicant stipulated to same, as well as adding a note to the plans to that effect.

16. On discussion of the May 25, 2021 Review Memorandum prepared by the Township Environmental Commission, Mr. Quinn advised that the Applicant is not required to implement stormwater management measures and opined that any stormwater runoff would only impact the Property itself, given its grading and topography, rather than any of the adjacent lots. On discussion of whether a catch basin would be beneficial, Mr. Quinn advised that there is no existing storm conveyance in the vicinity of the site to connect a new catch basin into and, therefore, it is better to have the runoff sheet flow off the Property. On questioning, Mr. Quinn explained that the proposed pool will not shed stormwater runoff and that, in his opinion as a civil engineer, he is comfortable with the Applicant's proposal. As to the landscaping, the Applicant stipulated to submitting a landscaping plan, same to be subject to the review and approval of the Township Engineering Department.

17. On questioning, Mr. Colucci testified that he communicated with the owners of adjacent Lots 41 and 43 and that they expressed support for his proposal. On questioning as to whether the pool could be located in a conforming location, Mr. Colucci explained that the Property is 1.7 acres, but that most of the usable land is near the street. He further explained that he was not aware of the flat area Mr. Schley referenced in his Review Memorandum and contended that it would be difficult to install plumbing and electric on top of a steep hill.

18. On discussion, Mr. Schley advised that, even if a pool were not proposed, the Applicant would be required to construct retaining walls given the current grading of the Property. On questioning as to whether the pool would exacerbate the existing drainage conditions, Mr. Quinn advised that the pool would reduce the rate of flow of stormwater runoff and opined that the pool actually provides a benefit in that regard.

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

### **DECISION**

20. After reviewing the evidence submitted, the Board, by a vote of 6 to 0, finds that the Applicant has satisfied his burden of proving an entitlement to the requested pool location variance under both of the alternative bases pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2), and the requested steep slope disturbance variance under N.J.S.A. 40:55D-70(c)(2).

#### **Subsection c(1) Variance Relief – Positive Criteria:**

21. As to the positive criteria for subsection c(1) variance for the pool location deviation, the Board finds that, by reason of exceptional topographic conditions and physical features uniquely affecting the subject use of 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 Applicant. Here, the proposed pool is not to the rear of the dwelling on adjoining Lot 41 to the northeast side. The dwelling on adjoining Lot 41 was constructed further from Lyons Road than the Applicant's dwelling, such that the rear building line of the dwelling on Lot 41 is over 70 feet further back than the rear building line of the Applicant's dwelling. To comply with the pool location requirement, without further disturbance to steep slopes over 25%, the proposed pool would have to be located on the flatter land at the rear of the property, which is over 170 feet from the dwelling. The Board recognizes that locating the pool such a significant distance from the dwelling itself is impractical, if not impossible, to provide plumbing and electrical connections given the existing steep slopes. Moreover, the Board finds that the exceptional practical difficulties and undue hardship that would result from strict application of the pool location ordinance was not self-created by the Applicant, nor was it created by any predecessor-in-title. As such, the Board finds that the Applicant has demonstrated the positive criteria for the requested subsection c(1) variance relief.

**Subsection c(2) Variance Relief – Positive Criteria:**

22. As to the positive criteria for a subsection "c(2)" or "flexible c" variance for the requested steep slope disturbance and pool location, the Board finds that the Applicant has satisfied his 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 proposed development will provide a desirable visual environment, enhance the visual compatibility of the Property with adjoining properties, provide safety benefits and otherwise promote the general welfare. Moreover, any detriment associated with the excess steep slope disturbance should be

mitigated by the conditions stipulated to by the Applicant. The Board recognizes that the purpose of the steep slope ordinance, set forth at Section 21-14.2.a, “is to regulate the intensity of use in areas of steeply sloping terrain in order to limit soil loss and erosion and the degradation of surface water.” The evidence revealed that the proposed steep slope disturbance will not undermine the purpose of the Ordinance, either during or after construction. In this regard, the Board recognizes that the proposed pool may actually slow the flow of stormwater runoff, thereby providing a benefit to community. The Board further recognizes that, as a condition of approval, the Applicant will submit the requisite certification from a licensed engineer attesting to the proper construction and structural adequacy of the retaining walls. The Board further finds that sedimentation and erosion will not result from the construction of the retaining walls thereon and that the architecture of the retaining walls is specifically designed to accommodate the topography, as required by Section 21-14.2.b.2 of the Land Development Ordinance. Additionally, the Board finds that the conditions stipulated to by the Applicant, as set forth below, will mitigate the relatively modest detriments resulting from the proposed development, further supporting a finding that the benefits to be derived from the development proposal substantially outweigh the detriments associated therewith. As such, the Board finds that the Applicant has demonstrated the positive criteria for the requested subsection c(2) variance relief.

**The c(1) and c(2) Variance Relief – Negative Criteria**

23. As to the negative criteria for the requested subsection c(1) and c(2) variance relief, the Board finds that the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose

of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board recognizes that the Applicant's proposal will reduce the likelihood of erosion and sedimentation and will improve the existing stormwater runoff conditions. Additionally, the Board recognizes that there was no public opposition to the application. As to the substantial impairment prong of the negative criteria, the Board recognizes that the proposed pool is a permitted use and 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 June 9, 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 7th day of July, 2021, that the application of **ADAM COLUCCI** for variance relief, as aforesaid, 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 Applicant shall submit a tree protection, removal, and replacement plan, which shall take into account trees previously removed and trees previously planted, same to be subject to the review and approval of the Township Engineering Department prior to any further land disturbance;
3. The Applicant shall amend the slope analysis plan to include labeling of the topographic contours, and to clarify the source of this topography, which appears different from the topography shown on the pool grading plan and survey;
4. Any proposed lighting in the pool area shall be directed downward or otherwise shielded so that glare, direct light or reflection will not be a nuisance to adjoining properties;

5. The Applicant shall revise the plans to include the location of the proposed pool equipment;
6. Soil from the pool excavation shall be removed from the Property unless the Applicant submits a grading plan showing where the soil will be used on the site, subject to review and approval by the Township Engineering Department prior to any further land disturbance;
7. As indicated in the Applicant's letter to the Board Chair dated April 28, 2021, the Board of Adjustment in 1983 granted a variance permitting an apartment on the second floor of the existing detached garage. Among the conditions of the 1983 variance approval is that the variance was personal to the prior property owners to whom it was granted, and the approval terminated when those prior property owners ceased to reside in the main dwelling. The Applicant acknowledges that the apartment still exists, and shall address the issue (i.e. obtain the necessary permits and remove the apartment or submit a complete application to the Board seeking approval for the residential apartment use) no later than September 5, 2021, which is 60 days from the date this resolution was adopted on July 7, 2021;
8. There shall be no construction or land disturbance, with the exception of slope stabilization (retaining wall construction), until the Applicant either submits a complete application for Board approval of the apartment (residential) use or obtains the requisite permits and removes/decommissions the apartment (residential) use. The Applicant shall obtain the necessary permits and commence slope stabilization work (retaining wall construction) no later than September 5, 2021, which is 60 days from the date this resolution was adopted on July 7, 2021;
9. The Applicant shall utilize "best management practices" when discharging pool water;
10. The Applicant shall submit a retaining wall design certified by a New Jersey licensed engineer and same shall be subject to the review and approval of the Township Engineering Department prior to construction;
11. The Applicant shall revise the pool grading plan to include one (1) foot contouring so that an accurate disturbance limit can be provided. The area of disturbance shall be identified and soil erosion and sediment control measures shall be depicted on the plan and same shall be subject to the review and approval of the Township Engineering Department or the Soil Conservation District, as applicable;
12. The Applicant shall revise the pool grading plan to include additional grading detail to the extent required by the Township Engineering Department, which may

include details such as pool coping elevation, contour tie-ins at the retaining wall termini, and clearly defined drainage paths around the pool patio area;

13. 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;
14. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
15. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor:                   Baumann, Breslin, Tancredi

Those Opposed:                 NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on July 7, 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: July 7, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**DAVID and CARRIE NAULTY  
Case No. ZB21-012**

**RESOLUTION**

WHEREAS, **DAVID and CARRIE NAULTY** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variances in connection with the construction of an inground swimming pool with adjoining concrete walkway/patio to the rear of the existing dwelling, and the prior installation of an unapproved 54” high decorative metal fence located in the front yard, on property identified as Block 6303, Lot 16 on the Tax Map, more commonly known as 1 Pin Oak Court (the “Property”):

1. A variance for a previously installed, unapproved fence located in a front yard with a height of 54”, whereas the maximum permitted height for a fence located in a front yard is 4 feet (48”), pursuant to Section 21-16.2.a of the Land Development Ordinance (the “Ordinance”); and
2. A variance to install an inground pool such that it is not behind the rear building line of existing residential structures on adjoining lots, in violation of Section 21-18.1 of the Ordinance; and

WHEREAS, a public hearing on notice was held on such application on June 17, 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.
2. The Property is a 36,451 square foot (0.837 acre) corner lot fronting on Pin Oak Court and Hunters Lane. It is presently improved with a two-story, single-family dwelling with a wood deck, frame shed, playhouse, and associated walkways and driveway.

3. The Applicants seek approval to construct an 18 foot by 36 foot (648 square feet) inground swimming pool with an associated 496 square foot adjoining concrete walkway/patio in the rear of the existing dwelling. The Applicants also seek approval for an existing 54” decorative metal fence, a portion of which is in the front yard.

4. The Applicants’ proposal is depicted on a Pool Location Plan prepared by Deborah D’Amico, P.E., dated November 12, 2020, last revised December 15, 2020, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by John C. Ritt, P.L.S., dated June 4, 2016, unrevised, same consisting of one (1) sheet and a compendium of eight (8) photographs of the Property.

5. The Property is located in the R-6 Residential Zone. The requested variances for the pool and fence location 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 Township/Board Planner, and Thomas J. Quinn, P.E., C.M.E., the Board Engineer, were duly sworn according to law.

7. Carrie Naulty, one of the Applicants, having an address of 1 Pin Oak Court, was duly sworn according to law. Ms. Naulty testified that she is seeking approval to construct an inground pool and to maintain a previously installed unapproved 54” fence located in the Hunters Lane front yard. She explained that the Property is a corner lot with frontage on two streets, resulting in two front-yard setback requirements. On questioning, Ms. Naulty testified that she had taken the photographs submitted with the application in January 2021, and she confirmed that they constitute an accurate depiction of the Property as it presently exists.

8. On discussion of the June 10, 2021 Review Memorandum prepared by Mr. Schley, Ms. Naulty stipulated, as a condition of approval, to complying with the recommendations and requirements set forth therein. As to the pool location, Mr. Schley advised that there is a very small

area of the Property that would be to the rear of the adjacent dwellings, but that said area is not large enough to accommodate the proposed pool. On discussion of the fence, Mr. Schley explained that there are two approximately 60-foot-long sections of 54" high decorative metal fencing located in the Hunters Lane ("secondary") front yard and that fences in the front yard cannot exceed 48". Ms. Naulty confirmed that the portion of the fence along the westerly/rear property line will be relocated to eliminate an existing encroachment onto the adjoining lot and that said fence will be set back a minimum of 6" from the Property line. On further discussion, Ms. Naulty confirmed that the existing non-conforming shed located in the Hunters Lane front yard will be removed.

9. On discussion of the existing and proposed screening between the pool and the dwelling on Lot 17, Ms. Naulty testified that there is existing shrubbery and that she intends to plant additional landscaping. She explained that one of the trees in the rear yard will be removed and introduced into evidence, as **Exhibit A-1**, the photograph depicting the rear yard with the tree to be removed circled thereon. Ms. Naulty stipulated to obtaining any necessary permits for tree removal and to submitting a tree protection, removal and replacement plan same to be subject to the review and approval of the Township Engineering Department and/or Board Planner. She further stipulated to all lighting being downward directed so as to eliminate spillage onto adjacent properties, to removing the soil associated with the pool excavation from the Site or submitting a grading plan showing where the soil will be used, to submitting the copy of the survey referenced on the plans, to obtaining approval from the Somerset-Union Soil Conservation District, and to complying with the "best management practices" when discharging pool water.

10. On questioning why portions of the fence do not require variance relief despite being located in the Hunters Lane front yard, Ms. Naulty explained that the fence along the Hunters

Lane frontage, i.e. parallel to the street, is only 4' high, whereas the balance of the fencing in the front yard, i.e. perpendicular to the street, is 54", thereby requiring variance relief. Ms. Naulty testified that she spoke with her neighbors to the west (rear) and south (adjacent to the left of the dwelling), and neither of them expressed any objection to her proposal.

11. On discussion of the May 3, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, Ms. Naulty stipulated to complying with all of the comments and requirements set forth therein, including revising the plans to include the pool filter pad, submitting the referenced survey, and obtaining certification from the Somerset-Union Soil Conservation District. On discussion of the Letter submitted by the Environmental Commission, Mr. Quinn explained that the Applicants are virtually at the maximum permitted lot coverage and that any future improvements would likely require variance approval, and Ms. Naulty acknowledged same.

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

### **DECISION**

13. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, concludes that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief as to the pool location and fence height in a front yard under both of the alternative bases for same set forth in N.J.S.A. 40:55D-70(c)(1) and (c)(2).

### **The Subsection c(1) Variance Relief – Positive Criteria:**

14. As to the positive criteria for the "c(1)" or "hardship" variance relief, 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 the existing lots/dwellings. The pool is not to the rear of the dwelling on adjoining Lot 17 to the south and the dwelling on Lot 17 is oriented radial to the bulb of the Pin Oak Court cul-de-sac, and as a result, the fronts of the two dwellings are angled toward each other, making compliance with the pool location requirement impossible for both properties. 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.

15. 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 also recognizes that the pool area will be appropriately buffered by existing and proposed landscaping.

16. The Board further recognizes, as to the fence height variance, the Applicants’ lot is a corner lot, requiring front yards along both Pin Oak Court (the “primary” front yard) and Hunters Lane (the “secondary” front yard). Front yard fences may not exceed a height of 4 feet and must be at least 50% open, whereas side and rear yard fences may be 6 feet high and solid. The Applicants’ proposed fence is 54” high, which requires a variance. Here, the increased height of the fence is de minimis and would be permitted if not for the two frontages. The Board further finds that the hardship that would be incurred by the Applicants if the pool location and fence height restrictions were strictly applied, would not be “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have satisfied the positive criteria for the requested subsection c(1) variance relief.

**The Subsection c(2) Variance Relief – Positive Criteria:**

17. With respect 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 finds that the proposal advances the purposes set forth in Section 2 of the Municipal Land Use Law in that it promotes a desirable visual environment, enhances the functionality of the home, and otherwise promotes the general welfare. The Board further finds that the benefits of the proposal substantially outweigh the very 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 for the requested subsection c(2) variance relief.

**The Subsection c(1) and c(2) Variance Relief – Negative Criteria:**

18. The Board further finds that the Applicants have satisfied the negative criteria; that is, they have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board recognizes that the Applicants have stipulated to relocating the existing portion of the fence on the adjacent lot, removing the non-conforming shed, and installing additional landscaping. The Board further recognizes that there was no public opposition to the proposal and no objection from the adjacent neighbors. As to the substantial impairment prong of the negative criteria, the Board recognizes that pools are permitted in the R-6 Zone and that granting the requested relief certainly does not rise to the level of a rezoning of the Property. As such, the Board finds that the Applicants

have satisfied both the positive and negative criteria for the requested variance relief pursuant to the alternative bases set forth in subsection c(1) and c(2).

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 July, 2021, that the application of **DAVID and CARRIE NAULTY**, 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 relocate the section of fencing along the westerly/rear property line onto the Property so as to eliminate an existing encroachment onto the adjoining property. The new location shall be set back a minimum of 6" from the property line and same shall be subject to the review and approval of the Township Engineering Department;
- 3) The Applicants shall remove or relocate the existing non-conforming shed to a conforming location, subject to obtaining a permit;
- 4) The Applicants shall install plantings to provide a buffer between the proposed pool and adjacent properties, and between the proposed pool and Hunters Lane, and same shall be subject to the review and approval of the Township Engineering Department;
- 5) All lighting shall be downward directed or otherwise shielded so that glare, direct light or reflection are not a nuisance to the adjoining properties;
- 6) The Applicants shall submit a tree protection, removal and replacement plan, and same shall be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- 7) Soil from the pool excavation shall be removed from the site unless the Applicants submit a grading plan depicting where the soil will be used on the site, same to be subject to review and approval by the Township Engineering Department prior to any land disturbance;
- 8) Prior to issuance of a construction permit, the Applicants shall submit a copy of the survey referenced on the submitted plan, which is not the survey submitted with the application;

- 9) The Applicants shall obtain approval from the Somerset-Union Soil Conservation District and proof of same shall be submitted to the Township Engineering Department;
- 10) The Applicants shall use the best management practices available when discharging pool water consistent with the recommendations attached to the Review Memorandum of the Township Planner;
- 11) The Applicants shall revise the plans to include the pool filter pad in the lot coverage summary and same shall be subject to the review and approval of the Township Engineering Department;
- 12) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- 13) The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
- 14) 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 variances has actually commenced within one year of the date of this Resolution.

ROLL CALL VOTE:

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

Those Opposed:                    NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of July 7, 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: July 7, 2021