

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

**MINUTES** v2  
Regular Meeting  
September 8, 2021

## **CALL TO ORDER**

Vice Chairwoman Genirs 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: Baumann, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi

Members Absent: Breslin

Also Present: Board Attorney, Steven K. Warner, Esq.; Township/Board Planner, David Schley, PP, AICP;  
Board Engineer, Thomas Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the absence of Mr. Breslin was excused.

## **APPROVAL OF MINUTES**

August 4, 2021 – Regular Session – On motion by Mr. Tancredi, seconded by Mr. Kraus, all eligible in favor and carried, the minutes were adopted as drafted.

## **APPROVAL OF RESOLUTIONS**

Caesar, Albert & Stephanie; Block 5302, Lot 3; 24 Post Terrace; ZB21-022 (approved) – Ms. Baumann moved approval of the resolution as drafted. Mr. Tancredi seconded.

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

Motion carried.

Weisfelner, B./Jackson, R.; Block 9501, Lot 37; 22 High Meadow Road; ZB21-019 (approved) - Mr. Kraus moved approval of the resolution as drafted. Ms. Pochtar seconded.

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

Motion carried.

Fabian, Matthew & Michelle; Block 6902, Lot 14; 20 Addison Drive; ZB21-021 (approved) - Ms. Pochtar moved approval of the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

[Verb, G./Williams-Verb, C.](#); Block 11501, Lots 11 & 12; 33 Long Road; ZB21-024 (approved) – Mr. Tancredi moved approval of the resolution as drafted. Mr. Kraus seconded.

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

Motion carried.

[Utz, John W.](#); Block 11102, Lot 3; 33 Rickey Lane; ZB19-001 (WITHDRAWN without prejudice) - Ms. Pochtar moved approval of the resolution as drafted. Ms. Baumann seconded.

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

Motion carried.

[Pyramid Healthcare Inc.](#); Block 2401, Lot 4; 170 Mt. Airy Road; ZB21-025 (WITHDRAWN without prejudice) – Mr. Tancredi moved approval of the resolution as drafted. Ms. Baumann seconded.

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

Motion carried.

**PUBLIC HEARING** (continued from 06/09/2021)

Kenken LLC; Block 1805, Lot 42; 1 Brownlee Place; Preliminary/Final Site Plan, Floor-Area-Ratio, Use Variance; Bulk Variances, Exceptions; ZB21-014

Present:	Jason R. Rittie, Esq., Attorney for the Applicant
	Kenneth J. Fox, AIA, PP, Architect and Planner for the Applicant
	Ricky C. Pennisi, Applicant

Jason R. Rittie, Esq., attorney with the firm of *Einhorn, Barbarito, Frost, Botwinick PC*, Denville, NJ, entered his appearance on behalf of the Applicant. He gave a brief description of the two (2) principal buildings on the subject property, noting that no work is proposed for the building in the front. The Applicant is proposing to construct a two-story addition, façade changes and site plan modifications to the building towards the rear which will be used as a pizzeria delivery restaurant. Mr. Rittie summarized the relief required adding that although restaurants are permitted in the B-1 Village Business Zone, the ordinance does not specifically permit a “delivery restaurant.” He stated that he would address the need for a “d-1” use variance later in the evening should the Board decide that the project as proposed is not a permitted use. Finally, Mr. Rittie declared that most of the bulk relief requested is preexisting and would remain unchanged.

Mr. Warner stated that notice was sufficient and timely therefore the Board had jurisdiction to hear this application and reminded the witnesses and the Board’s professionals that they were still under oath. Vice Chairwoman Genirs affirmed that the three (3) Board members who were absent during the first hearing on 06/09/2021 had viewed the video and were therefore eligible to vote.

Ricky C. Pennisi, owner of the subject property for 21 years, stated that currently, the building to the rear of the property is an ice cream shop called “Ava’s Homemade Ice Cream” and he proposes to replace that with a family run pizzeria. Pizza would be available for takeout and delivery only, with a takeout window facing East Henry Street and no inside seating for dining. Operating hours would be seven (7) days a week, 11:00 AM to 11:00 PM, with a maximum of six (6) employees (4 employees inside and 2 for delivery). He stated that he did not plan to use delivery services such as Grub Hub or Door Dash because of the cost.

Mr. Pennisi stated that the building to the front of the subject property is a salon called “Atelier Salon and Spa” and speculated that there would be minimal overlap in the hours of operation for the two (2) businesses. Currently, patrons of the salon can request that ice cream be delivered to them in the salon. Mr. Pennisi affirmed that that practice would continue with pizzeria items and opined that this would comprise a large portion of the pizzeria’s business.

In response to a question about parking for employees, Mr. Pennisi responded that the pizzeria's two (2) delivery vehicles would be parked in the lower lot. Salon employees currently park in the upper lot in a tandem configuration. Mr. Quinn stated that there is sufficient room for tandem parking without any spillage into the right-of-way but since tandem parking is not allowed in the Township, the Applicant would have to request a design exception in order to continue the practice. Mr. Schley added that the tandem parking arrangement is not shown on the plans and additional relief for minimum aisle width and minimum setback from a property line for the upper parking area is required. The Applicant stipulated that the tandem parking area in the upper lot would be designated for employees only and identified with appropriate signage.

Mr. Pennisi testified that all deliveries to the restaurant would arrive early in the morning before the pizzeria opens and that he would be present for those deliveries. He added that garbage removal (dumpster service) takes place early Friday mornings.

A discussion ensued as to whether the pizzeria should be considered a retail sales and services establishment (permitted use) or a delivery restaurant (requiring a d-1 "use" variance). Mr. Warner counseled the Board that in order to be designated as a "delivery restaurant," the pizzeria would have to meet at least one (1) of the following three (3) criteria as stated in Ordinance §21-3.1 (definitions): "...75% or more of the number of orders and/or 75% or more of the quantity of goods sold and/or 75% or more of the sales revenues are intended to be by way of deliveries, to be made by a limited number of motor vehicles owned or being used on behalf of the establishment."

The meeting was opened to the public for questions for this witness. Todd Edelstein, 172 Riverside Drive, asked whether the parking lot would be paved and where vehicles would park when it snows. Mr. Pennisi responded that only the handicapped parking stall would be paved. He stated that he is responsible for snow removal for both the upper and lower lot, adding that there had never been issues. Hearing no further questions, that portion of the hearing was closed.

Kenneth J. Fox, AIA, PP, senior architect and president of *Fox Architectural Design PC*, Ledgewood, NJ, was accepted by the Board as an expert in the fields of architecture and professional planning. Mr. Fox provided a brief overview of the site and the existing structure, stating that both the portion of the parking lot that extends onto the Post Office property and the shed located on the Post Office property would be removed. He added that based on comments made at the first meeting (06/09/2021), the Applicant now proposes to pave the handicapped accessible parking stall along with the surrounding area and to provide a ramp from that parking stall to the building so that accessibility for handicapped patrons would be available via hard surface from the ADA parking stall to the building. Mr. Fox affirmed that the ramp design would be revised to be ADA compliant.

Mr. Fox stated that, in response to comments made by the Environmental Commission and the Historical Society of the Somerset Hills Historic Preservation Advisory Committee, the façade was changed and a small amount of additional floor area was added to make the entire building two (2) stories (affecting the FAR deviation slightly) so that the building would be more consistent with the historical character of the area. **Exhibit A-2**, page EX-1 of 1, dated 09-07-2021, titled "Proposed Delivery Restaurant Interior" and prepared by Fox Architectural Design, was entered into evidence. After reviewing the revisions made, Mr. Fox stipulated that the office area on the second floor would be used solely for the pizzeria and not leased out. He added that there would be an ADA compliant bathroom on each floor and stipulated that there would be no indoor seating.

**Exhibit A-3**, a Building Coverage and Calculations Sheet, revised 09-07-2021 was entered into evidence to address the lot coverage discrepancy pointed out in Mr. Quinn's memo dated 09-07-2021. The remaining items in his memo, along with those contained in Mr. Schley's memo dated 09-01-2021 were addressed. Mr. Fox also addressed the items in the Fire Official's memo of 08-25-2021 and the Basking Ridge Fire Company's memo dated 09-01-2021 to the satisfaction of the Board. Finally, he confirmed that the picket fence that encroaches into the Township right-of-way has already been removed.

Based on the testimony proffered by Mr. Pennisi, Mr. Fox opined that the proposed pizzeria did not meet any of the three (3) 75% criteria standards required to be designated as a delivery restaurant and therefore, the Board could consider this a retail sales establishment which is a permitted use in the B-1 Village Business Zone.

Mr. Pennisi stipulated to providing a report to the Zoning Officer every six (6) months for two (2) years confirming that, based on the daily operations, the pizzeria did not meet any of the 75% thresholds.

The Board conducted a straw poll and unanimously agreed that the restaurant as proposed should be considered a retail sales establishment and therefore would not require a "d-1" use variance.

Mr. Fox provided testimony to satisfy the statutory requirements for the Board to grant the requested relief for the remaining "d-4" FAR variance and the dimensional variances.

A significant discussion ensued concerning the deficit in parking stalls. Mr. Pennisi testified that there had never been an issue in the past and stipulated to using no more than two (2) delivery drivers at any one time.

Hearing no further questions from the Board or its professionals, the hearing was opened to the public for questions or comments. Todd Edelstein, 172 Riverside Drive, was duly sworn and expressed support for the project. Hearing no further questions or comments from the public, that portion of the hearing was closed.

Mr. Rittie did not offer a closing summary. Mr. Warner reviewed the relief requested and the conditions of approval.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for the variances requested. Mr. Tancredi moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant Preliminary and Final Site Plan approval and to grant relief for the variances and exceptions as requested, subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Kraus seconded.

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

Motion carried.

#### **2020 ANNUAL REPORT AND RECOMMENDATIONS**

Mr. Warner gave a brief summary of the Board's role in making zoning recommendations to the Township Committee and Planning Board based on applications that have been heard in 2020. He then asked the Board to review the report and email any revisions directly to him. Final discussion and potentially adoption of the report will be scheduled for October.

#### **COMMENTS FROM MEMBERS OR STAFF** - NONE

#### **ADJOURN**

Moved by Mr. Tancredi, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 11:28 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 10-06-2021*

09/21/2021 dsawsw

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**ALBERT and STEPHANIE CAESAR  
Case No. ZB21-022**

**RESOLUTION**

WHEREAS, **ALBERT and STEPHANIE CAESAR** (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”), for the following variance in connection with the construction of a second floor master bedroom addition above the existing two-car garage on the south side of the existing dwelling located on property identified as Block 5302, Lot 3 on the Tax Map, more commonly known as 24 Post Terrace (the “Property”):

A variance for a rear-yard setback of 60 feet to the addition, whereas the existing rear-yard setback is 45 feet, and the minimum required rear-yard setback in an R-4 (1 acre) residential zone is 75 feet, pursuant to Section 21-15.1.d.1 and Table 501 of the Land Development Ordinance (the “Ordinance”); and

WHEREAS, a public hearing on notice was held on such application on August 4, 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 Property is a corner lot consisting of 40,722 square feet (0.93 acres) located in the R-4 (1 acre) residential zone with frontage on both Post Terrace and Galloping Hill Road. The lot is somewhat undersized (43,560 square feet required) and narrow (168’ width; 200’ width required). Because the existing dwelling faces Post Terrace instead of Galloping Hill Road, the lot has a building envelope that averages approximately 12 feet deep (the lot is an average of

approximately 162 feet deep at Post Terrace and the required front yard and rear yard setbacks are 75 feet each).

2. In 2014, the Board granted the Applicants approval (#ZB14-007) of a one-story addition that reduced the pre-existing rear-yard setback from 53 feet to 45 feet. The Applicants now seek to construct a 22 foot by 24 foot (524 square foot) second floor master bedroom addition, located above the two-car garage on the south side of the existing dwelling. The addition is entirely within the existing building footprint and will vertically extend, though not reduce, the setbacks as measured to the garage on the south side of the dwelling. The existing/proposed westerly (Post Terrace) front-yard setback and southerly (Galloping Hill Road) front-yard setback are conforming, however, a variance is required for the proposed vertical extension of the pre-existing non-conforming easterly rear-yard setback, which is 60 feet.

3. The requested variance for the rear-yard setback deviation is governed by the criteria of N.J.S.A. 40:55D-70(c).

4. The Applicants' proposal is depicted on Architectural Plans prepared by Jay Michael Petrillo, A.I.A., dated April 27, 2021, unrevised, same consisting of two (2) sheets; and a Survey, prepared by Jack L. Held, P.L.S., dated July 7, 2000, unrevised, with the proposed improvements sketched thereon. The Applicants also submitted a copy of the aforementioned survey without the proposed improvements, as well as three photographs of the Property.

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

6. Albert and Stephanie Caesar, the Applicants, having an address of 24 Post Terrace, were duly sworn according to law. Mr. Caesar testified that the Applicants purchased the Property in 2000 and, since then, have expanded their family to include four children and a dog. He

explained that the existing dwelling only has four bedrooms and that the proposed addition would allow each of the children to have his/her own bedroom, as well as provide an additional bathroom and home office. Mr. Caesar noted that the Applicants were previously before the Board in 2014, when they sought and obtained approval to expand the dwelling. He explained that the Applicants wanted to construct the proposed addition at that time, but that they did not have the budget to do so.

7. On questioning, Mr. Caesar testified that the photographs submitted with the application materials were taken by their architect, Jay Michael Petrillo, in approximately April 2021.

8. Jay Michael Petrillo, A.I.A., having a business address of 38 Hardscrabble Road, Basking Ridge, 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. Petrillo confirmed that he had taken the photographs submitted with the application materials and that said photographs constitute an accurate depiction of the Property as it presently exists.

9. Mr. Petrillo reviewed the Architectural Plans and explained that the proposal is essentially 'part two' of the Applicants' 2014 application. He testified that the existing second floor has four bedrooms and two bathrooms, and that the proposed addition would allow the Applicants to construct an additional bedroom and bathroom on the second floor. Mr. Petrillo further testified that the existing master bathroom will be converted to a hall bathroom, such that there will be two bathrooms on the second floor for the children. He confirmed that the proposed addition will not result in any additional disturbance or impervious coverage because it will be located directly on top of the existing first floor.

10. On discussion of the July 29, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley, Mr. Petrillo confirmed the accuracy of the statements therein. He concurred with Mr. Schley that most of the dwelling is outside of the building envelope and that there is no possible conforming location within which the addition could be located. Mr. Petrillo contended that the proposal would not result in substantial detriment to the neighborhood, particularly given the distance of approximately 95 feet between the addition and the dwelling on adjacent Lot 4. He further contended that many of the dwellings in the neighborhood have been expanded and, therefore, the Applicants' proposal would not render the dwelling out of character with the existing neighborhood.

11. On questioning, the Applicants testified that they had spoken to the owners of Lot 2 and Lot 8 and that both were supportive of the proposal. On further questioning, the Applicants stipulated that the exterior of the addition would be substantially similar in architectural style, materials, and color to the exterior of the balance of the dwelling.

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, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the rear-yard setback deviation under N.J.S.A. 40:55D-70(c)(1).

14. As to the positive criteria for subsection "(c)(1)" or "undue hardship" variance relief for the requested deficient rear-yard setback, the Board finds that the Applicants have satisfied their burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property, as a result of unique conditions relating to the Property, which is



undersized and narrow. In this regard, the Board recognizes that the building envelope averages only 12 feet deep and that the potential for a conforming addition is extremely limited. The Board further finds that the undue hardship that would be incurred by the Applicants if the zoning regulations were to be strictly enforced would not be self-created by the Applicants or any predecessor-in-title. As such, the Board finds that the Applicants have demonstrated the positive criteria pursuant to N.J.S.A. 40:55D-70(c)(1).

15. As to the negative criteria for 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, the Board recognizes that the proposed addition is entirely within the existing footprint and will not result in additional land disturbance. The Board further recognizes that, as testified to by Mr. Petrillo, other dwellings in the neighborhood have also been expanded such that the dwelling not be out of character with the existing neighborhood. Of note, no member of the public commented on, or objected to, the Applicants' proposal. Additionally, the Board finds that that the relatively modest detrimental impact is mitigated by the conditions stipulated to by the Applicants and set forth below.

16. As to the substantial impairment prong of the negative criteria, the Board recognizes that residential dwellings are permitted in the R-4 Residential Zone and finds 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 subsection c(1) variance relief.

WHEREAS, the Board took action on this application at its meeting on August 4, 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 8th day of September, 2021, that the application of **ALBERT and STEPHANIE CAESAR**, 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 exterior of the addition shall be substantially similar in architectural style, materials, and color to the balance of the exterior of the existing dwelling;
3. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
4. The aforementioned approval also shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State; and
5. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance relief granted herein shall expire unless such construction or alteration permitted by the variance relief has actually commenced within one year of the date of this Resolution.


ROLL CALL VOTE:

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

Those Opposed: NONE

Those Ineligible: Pavlosky

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 September 8, 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: September 8, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**BENJAMIN WEISFELNER and REBECCA JACKSON  
Case No. ZB21-019**

**RESOLUTION**

**WHEREAS, BENJAMIN WEISFELNER and REBECCA JACKSON** (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 removal of an existing patio and the construction of an inground pool, including a sun shelf and spa, and a pool house/pavilion, all to be located to the rear of the existing dwelling, on property identified as Block 9501, Lot 37 on the Official Tax Map of the Township of Bernards, more commonly known as 22 High Meadow Lane (the “Property”):

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

**WHEREAS,** a public hearing on notice was held on such application on August 4, 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 Property consists of a 2.03 acre lot located in the PUD-5 (The Hills) Residential Zone, with frontage on High Meadow Lane. The Property is presently improved with a two-story single-family dwelling, porch, wood deck, slate patio, and asphalt driveway. It is encumbered by wetlands and wetland transition areas.

2. The Applicants propose to remove an existing patio and construct a 22 foot by 42 foot (924 square foot) inground swimming pool, which includes a sun shelf and spa and a 1,164 square foot patio surround to the rear of the existing dwelling. The Applicants also propose a future 15 foot by 20 foot (300 square foot) pool house/pavilion adjoining the proposed pool patio.

3. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Ordinance, which states “the pool shall be located behind the rear building line of existing residential structures on adjoining lots.” The Applicants’ lot adjoins a total of four lots, and the proposed pool is not to the rear of the dwellings on either Lot 33 or Lot 38.

4. The pool location variance is governed by the criteria of N.J.S.A. 40:55D-70(c).

5. The Applicants’ proposal is depicted on Engineering Plans prepared by David E. Fantina, P.E., dated December 7, 2020, unrevised, same consisting of five (5) sheets; and a Pool Structure Details Plan prepared by Jeffrey J. Careaga, P.E., dated February 5, 2021, unrevised, same consisting of one (1) sheet. The Applicants also submitted a Wetlands/Transition Area Investigation prepared by David C. Krueger of Environmental Technology Inc., dated June 2, 2021; a Survey prepared by Richard S. Zinn, P.L.S., dated September 20, 2020, unrevised, same consisting of one (1) sheet. The Applicants also submitted a compendium of photographs and maps depicting the Property and the proposed improvements, same consisting of six (6) pages.

6. 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.

7. Frederick Zelley, Esq., of Bisogno, Loeffler & Zelley, LLC, entered his appearance on behalf of the Applicants, Benjamin Weisfelner and Rebecca Jackson. Mr. Zelley explained that the Property is located in the PUD-5 Zone and that, given the location and orientation of the lot, as well as the existing improvements thereon, the proposed pool is not located to the rear of the

adjacent dwellings. He further explained that there is one conforming location, but that same is heavily wooded and far from the dwelling itself. Mr. Zelley contended that the Applicants are entitled to the requested variance relief pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

8. Benjamin Weisfelner, one of the Applicants, having an address of 22 High Meadow Road, was duly sworn according to law. Mr. Weisfelner testified that he currently lives with his wife and their two daughters. He explained that the proposed pool will replace the children's current inflatable pool. Mr. Weisfelner further explained that the proposal includes a prefabricated 14 foot by 20-foot pool pavilion with a storage area. On questioning, he confirmed that the pool pavilion will not have plumbing or any decorative lighting. He confirmed that any proposed lighting would be recessed or otherwise downward directed and/or appropriately shielded to prevent light spillage onto the adjacent properties.

9. On questioning, Mr. Weisfelner testified that he had taken the photographs submitted with the application materials in the late Summer/early Fall of 2020 and confirmed that they constitute an accurate depiction of the Property as it presently exists.

10. David E. Fantina, P.E., having a business address of 15 Sunset Drive, Bernardsville, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Mr. Fantina testified that locating the pool in a conforming location would result in significant tree removal and the pool being located very far from the dwelling. He further testified that the Applicants are proposing a patio surround and a relatively small/modest cabana without plumbing. Mr. Fantina explained that the proposed retaining walls are primarily architectural features and opined that they will be attractive. He further explained that many of the properties in the neighborhood have pools and, therefore, the Applicants' proposal will not render the Property out of character with the existing neighborhood.

11. On questioning, Mr. Fantina testified that the Applicants had a wetlands consultant visit the Property and that he indicated that there are no critical areas within the limit of disturbance. Mr. Fantina confirmed that the transition areas also do not extend into the limit of disturbance and that no large trees are proposed to be removed. On further questioning, Mr. Fantina contended that additional landscape screening is not necessary given the distance and the significant wooded buffer between the Property and the adjacent lots.

12. The Applicants stipulated, as a condition of approval, to complying with all of the comments and requirements set forth in the July 29, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley. As to Comment 5, regarding the wetlands conservation easement, Mr. Schley advised that the Township is requesting an updated wetlands delineation based on the existing conditions, not the Survey, and that the easement should reflect said delineation.

13. As to the July 30, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn, the Applicants stipulated to complying with the comments and requirements set forth therein. On discussion of Comment 5, regarding the boulder wall, Mr. Quinn advised that the design engineer will need to certify the stability of the wall following construction and the Applicants acknowledged same.

14. On questioning, Mr. Fantina confirmed that the Applicants' proposal does not exceed the maximum permitted coverage, and Mr. Schley concurred with this conclusion. On further questioning, Mr. Weisfelner testified that the Applicants had spoken to their neighbors and that no one had expressed any concerns.

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

### **DECISION**

16. After reviewing the evidence submitted, the Board, by a vote of seven (7) to zero

(0), finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief as to the proposed pool location under both of the alternative bases for relief under N.J.S.A. 40:55D-70(c)(1) and (c)(2).

**Subsection c(1) – Positive Criteria:**

17. As to the positive criteria for the subsection “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 as the owners of the Property. Here, the Property adjoins a total of four lots, and the proposed pool is not to the rear of the dwellings on Lot 33 and Lot 38. As to Lot 33 (140 Woodman Lane) to the northwest/rear, given the existing street layout, the side of the dwelling on Lot 33 faces the Applicants’ rear yard, such that the proposed pool would have to be moved toward the southwest side of the Property (closer to the dwelling on Lot 38) to comply with the pool location requirement. As to Lot 38 (10 High Meadow Lane) to the southwest side, given the curve in High Meadow Lane, the dwelling on Lot 38 is angled toward the Applicants’ dwelling, such that the proposed pool would have to be moved further back on the Property (closer to the dwelling on Lot 33 to the rear) to comply with the pool location requirement. The Board finds that the Applicants have demonstrated that the hardship that would result from the strict application of the zoning ordinance would not be the result of conditions that were “self-created” by the Applicants or any predecessor-in-title. As such, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1).

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

18. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for



the pool location, 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 enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that locating the proposed pool in a conforming location would require significant tree removal and additional disturbance, and same would result in the pool being significantly closer to the adjacent neighbors. Moreover, locating the pool so far from the dwelling renders it unsafe for the family and guests, particularly young children. As such, the Board finds that locating the pool in the proposed nonconforming location actually constitutes a better planning alternative than locating it in a conforming location. Additionally, the Board finds that the proposed location will allow the Applicants to maintain a clear line of sight of their children, whereas a conforming location would be much further from the dwelling. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2).

**Negative Criteria:**

19. As to the negative criteria required for the variance relief, pursuant to subsections c(1) and c(2), the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master 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 out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. The Board notes that the proposed pool is approximately 280 feet from the dwelling on Lot 38 to the southwest side, and approximately 190 feet from the dwelling on Lot 33 to the northwest/rear. As such, the Board finds that the pool will be sufficiently screened by both the existing landscaping and the existing dwelling, 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 many of the dwellings in the neighborhood also have pools, such that the proposal will be consistent with the existing neighborhood. Moreover, the Board recognizes that no member of the public objected to the Applicants' proposal.

20. 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 Township's Master Plan or Zoning Ordinances, particularly since pools are permitted structures in the PUD-5 Zone. 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 finds, in this regard, that the requested deviation is relatively modest in nature and certainly does not rise to the level of constituting a rezoning of the Property. 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), for the pool location variance relief.

21. Based upon the foregoing, the Board finds that the Applicants have demonstrated

both the positive and the negative criteria for the requested pool location variance relief, under both of the alternative bases for such relief under N.J.S.A. 40:55D-70(c).

**WHEREAS**, the Board took action on this application at its meeting on August 4, 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 8th day of September, 2021, that the application of **BENJAMIN WEISFELNER AND REBECCA JACKSON**, 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 and other municipal obligations prior to issuance of any zoning or building permits;
3. The Applicants shall revise the plans relative to the proposed pool equipment pad (which is shown on sheet S1.2 but not labeled), the existing generator (which is labeled but not shown), the labeling of the existing/proposed rear fencing (which is unclear), and the scale indicated on sheet S1.2 (which is incorrect);
4. The Applicants shall revise the lot coverage table on sheet C1.0 to account for the proposed removal of the existing slate patio (which may affect stormwater management requirements), and to identify the pool water surface area (which counts as lot coverage though is not considered when calculating stormwater management requirements);
5. Any/all on-site wetlands and wetlands transition areas shall be delineated on the plans and contained within a wetlands conservation easement deeded to the Township. In determining the limits of the easement, the Applicants shall use the existing conditions as identified by a qualified consultant, rather than the information set forth on the prior survey. The easement shall be prepared by the Township Attorney, executed by the Applicants, 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;
6. Stormwater infiltration measures shall be provided in accordance with Section 21-42.11 of the Ordinance. The proposed measures shown on the plans shall be subject to further

review and approval by the Township Engineering Department prior to issuance of a construction permit. Perc test results in support of the proposed design shall also be provided at that time;

7. Any proposed exterior lighting shall be directed downward or otherwise shielded so that glare, directed light or reflection will not be a nuisance to adjoining properties;
8. The Applicants shall submit a tree protection, removal and replacement plan, as applicable, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
9. 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;
10. The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
11. The Applicants shall revise the grading plans to include sufficient spot grades to clearly show how the grading around the pool patio will prevent runoff from bypassing the proposed inlets at the corners of the patio;
12. The Applicants shall revise the plans to reflect that the minimum cover over the 6” pipes connected to the inlets shall be 6” in order to provide for even, proper grass growth;
13. Following construction, the Applicants shall submit a certification from the design engineer certifying the stability of the proposed boulder wall;
14. The Applicants shall revise the drywell detail to note that a soil log and permeability testing are required within the system footprint to confirm the absence of groundwater within two (2) feet of the bottom of the proposed infiltration system and shall confirm sufficient permeability to evacuate all collected runoff within 72 hours, per the New Jersey Best Management Practices Manual. The system may have to be re-designed to a gravity discharge system if the soil investigation cannot establish these parameters. Any revisions to the stormwater management plan shall be subject to the review and approval of the Township Engineering Department;
15. The Applicants shall obtain certification by the Somerset-Union Soil Conservation District;
16. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
17. The Applicants shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township,

County and State; and

18. Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one (1) year of the date of this Resolution.

ROLL CALL VOTE:

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

Those Opposed: NONE

Those Ineligible: Pavlosky

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 September 8, 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: September 8, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**MATTHEW and MICHELLE FABIAN  
Case No. ZB21-021**

**RESOLUTION**

WHEREAS, **MATTHEW and MICHELLE FABIAN**(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 a 948 square foot paver patio around a recently constructed, previously approved inground pool, and the relocation of an existing 100 square foot shed, same to be located on property identified as Block 6902, Lot 14 on the Tax Map, more commonly known as 20Addison Drive (the “Property”):

A variance for a proposed lot coverage of 17.3%<sup>1</sup>, whereas the existing lot coverage is 16.4%, the approved coverage is 14.96%, 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

WHEREAS, a public hearing on notice was held on such application on August 4, 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 Property is an undersized (0.934 acres; 1 acre required), narrow (approximately 166’ existing; 200’ required) lot with frontage on Addison Drive. The Property is presently improved with a two-story frame dwelling, covered porch, wood deck with steps, paver patio, fiberglass pool, and associated driveways and walkways.

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<sup>1</sup> The Applicants subsequently modified their proposal such that the proposed lot coverage was reduced from 17.3% to 16.8%.

2. In 2020, the Applicants obtained a construction permit to install a pool and retaining walls/steps (no patio), resulting in a conforming lot coverage of 14.96%. The Applicants now seek approval to construct a 668 square foot paver patio surrounding the pool and a 280 square foot upper patio between the pool patio and the dwelling. Of note, a 303 square foot portion of the pool patio and the entire 280 square foot upper patio already have been constructed.

3. The Applicants now propose to construct the balance of the 948 square foot paver patio around the recently constructed, previously approved, swimming pool. The Applicants also propose to relocate the existing 100 square foot shed to eliminate the existing non-conforming setback from the west side property line.

4. The Applicants' proposal is depicted on a Variance Plan prepared by Aaron Pastore, L.L.A., dated March 28, 2021, unrevised, same consisting of one (1) sheet and a Rain Garden Plan prepared by Allison J. Lapatka, P.E., P.L.S., dated June 24, 2021, unrevised, same consisting of one (1) sheet. The Applicants also submitted a Property Survey prepared by Douglas B. Smith, P.L.S., dated May 13, 2020, unrevised, same consisting of one (1) sheet; and a compendium of ten (10) photographs of the Property.

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

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

7. Frederick Zelley, Esq., of Bisogno, Loeffler & Zelley, P.C., entered his appearance on behalf of the Applicants. Mr. Zelley advised that the Applicants are seeking variance relief for excessive impervious coverage related to the construction of a swimming pool and patio surround. He explained that the swimming pool was approved, but that the decking/patio area was constructed without approval, resulting in an existing, unapproved lot coverage of 16.4%. Mr.

Zelley further explained that the Applicants are now seeking to construct the balance of the patio, resulting in a proposed impervious coverage of 17.3%. He noted that the Applicants stipulate to relocating the existing shed to a conforming location. Mr. Zelley contended that the Applicants had met the positive and negative criteria for subsection c(2) variance relief.

8. Mr. Zelley stated that he had taken the photographs submitted with the application materials on April 9, 2021, and confirmed that they constitute an accurate depiction of the Property as it presently exists.

9. Matthew Fabian, one of the Applicants, having an address of 20 Addison Drive, was duly sworn according to law. Mr. Fabian testified that the Applicants purchased the Property in 2017 and recently had a pool installed. He explained that he knew constructing a larger patio and pool surround than approved would result in an exceedance of the permitted coverage, but felt that constructing the improvements would provide a safer environment for his children and older family members. Mr. Fabian explained that the Applicants' pool cover is currently anchored in rebar and, in his opinion, same constitutes a safety issue because people can trip over the anchor. On questioning, he explained that he was advised that the improvements exceeded the permitted/approved coverage during the final inspection and he fully anticipated that Board approval would be necessary. On questioning, Mr. Fabian testified that the shed already was on the Property when the Applicants purchased it, but he stipulated to relocating the shed to a conforming location.

10. On discussion of the photographs submitted with the application materials, Mr. Fabian provided a description of each photograph and confirmed that they accurately depict the existing conditions.

11. On questioning by the Board, Mr. Fabian testified that the Applicants did not



propose a deck and, when the Applicants realized that a patio would require impervious coverage variance relief, the pool contractor suggested that the pool would be functional without any patio or decking. He advised that the pool contractor did not explain the nature of the pool cover anchors. Mr. Fabian explained that the pool cover anchors could be better secured in concrete than decking or grass. On questioning as to whether a small foundation could be poured just for the rebar anchors, Mr. Fabian contended that same would still constitute a tripping hazard.

12. On questioning as to the proposed coverage calculations, Mr. Zelley advised that the prior approved 14.9%, and the existing unapproved 16.4%, impervious coverage calculation includes the pool water, which he characterized as “stormwater neutral.” The Board engaged in discussion regarding which improvements were shown on the permit plan and which were not. On questioning as to whether the proposed coverage could be reduced, Mr. Fabian advised that it could not because he wanted the improvements to be symmetrical. He explained that he did not wish to reduce the width of the driveway, or remove any of the existing pavers that had been installed without approval. Mr. Quinn, the Board Engineer, advised that he would prefer that the Applicants reduce the size of the patio, rather than remove a portion of the driveway, given the drainage flow. Mr. Quinn advised that the pool water accounts for approximately 1 percent of the total lot impervious coverage.

13. On questioning regarding the retaining wall, Mr. Fabian advised that it is approximately 105 feet in length, and that 30 feet of it was not included on the plans. On questioning as to whether the patio areas could be reduced, Mr. Fabian advised that he preferred not to do so given the expenditures that he had already made. On questioning regarding the lighting, Mr. Fabian advised that he had not received any complaints from his neighbors as to same, and he testified that he was not informed any additional permits were necessary. He

explained that the Township had already inspected the electric and had instructed the Applicants to obtain a low voltage lighting permit, which they did.

14. Allison J. Lapatka, P.E., P.L.S., having an address of 34 Olcott Road, Hewitt, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the fields of civil engineering and land surveying. Ms. Lapatka testified that the Property is relatively rectangular and has gentle slopes. She explained that the adjacent dwellings are a significant distance from the proposed pool and that no trees are intended to be removed. Ms. Lapatka further explained that the Property is not subject to any environmental constraints.

15. Ms. Lapatka described the existing drainage patterns, noting that there is a swale/drainage ditch along the rear property line that ultimately leads to Lyons Road. She explained that the Applicants are proposing a rain garden to capture the excess impervious coverage, and she stipulated, as a condition of approval, that the design of the rain garden would be in accordance with the requirements set forth in Mr. Quinn's July 30, 2021 Review Letter.

16. Ms. Lapatka explained that the rain garden consists of a depression area that will collect stormwater with an infiltration layer that allows stormwater runoff to recharge. She testified that the depression area will be planted with native plants that will attract bees and butterflies, essentially creating a bio-retention facility. On questioning, she confirmed that the rain garden can accommodate the stormwater runoff associated with the increased coverage. On further questioning, Ms. Lapatka explained the difference between a rain garden and a drywell.

17. On questioning as to maintenance, Ms. Lapatka explained that the rain garden requires a maintenance plan, including removing leaves/debris, changing the plantings, and general maintenance. She testified that the rain garden is noted in the deed and is subject to

inspection by the New Jersey Department of Environmental Protection (“NJDEP”). On questioning, Ms. Lapatka testified that if the rain garden fails, stormwater runoff could spill out. Mr. Quinn expressed concern that many homeowners do not properly maintain their rain gardens given the significant maintenance requirements. Mr. Fabian testified that the rain garden will be visible and stipulated to maintaining it appropriately. On questioning as to whether the NJDEP actually inspects rain gardens, Mr. Quinn advised that the NJDEP rarely gets involved with a single-family dwelling and that, instead, it would be up to the Township to ensure that the rain garden is appropriately maintained. Mr. Schley noted that, with a rain garden, the Applicants are required to provide an easement to the Township for maintenance access, if necessary, but that same is not required for the construction of drywell.

18. As to the location of the rain garden, Ms. Lapatka testified that it will be in a heavily wooded area, and she confirmed that the existing trees will be protected. She explained that there are plants that are shade tolerant and can survive under the Pine trees. Ms. Lapatka further explained that the specific plantings are selected based on the soil type and general environment. She testified that the plantings are in two-inch pots and can be rearranged and/or replaced as necessary.

19. On questioning as to which properties would be impacted if the rain garden were to fail, Ms. Lapatka explained that any spillage would be captured by the existing swale/drainage ditch and then directed to Lyons Road. She contended that there would be no adverse impact on any of the adjacent properties unless both the rain garden and the swale are entirely clogged. Ms. Lapatka confirmed that she had no indication that the swale system is not fully functional and confirmed that she did not anticipate any detriment to the adjacent properties even if the rain garden were to fail.

20. The Applicants stipulated, as a condition of approval, to complying with the comments and requirements set forth in the July 29, 2021 Review Memorandum prepared by the Board Planner, Mr. Schley. Mr. Fabian confirmed that any additional lighting would be downward directed and/or appropriately shielded to prevent light spillage onto the adjacent properties. The Applicants further stipulated to complying with the comments and requirements set forth in the July 30, 2021 Review Letter prepared by the Board Engineer, Mr. Quinn. On discussion, Ms. Lapatka concurred with Mr. Quinn's suggestion that the Applicants capture roof runoff, rather than runoff from the patio, thereby eliminating the need for perimeter drainage around the patio. Ms. Lapatka acknowledged that any modifications of the stormwater management measures would be subject to the review and approval of the Township Engineering Department.

21. On questioning, Mr. Fabian testified that the Applicants had spoken with their neighbors and that none of them expressed concern about the proposal.

22. On questioning by the Board, Mr. Quinn contended that the proposed stormwater management measures are sufficient to accommodate the runoff associated with the entirety of the proposal, including the excess coverage. He noted that even if the rain garden were to fail, runoff would still go into the swale and, ultimately, drain to the Lyons Road right-of-way. Mr. Quinn explained that he did not believe removing a portion of the driveway would be helpful, because the driveway likely drains towards the front of the Property, rather than the rear. He expressed frustration that the Applicants had not gotten approval for the improvements prior to partially constructing them because the Township could have been more involved in the engineering of the project at the outset.

23. After hearing some of the Board's deliberation, Mr. Zellely requested that the Board consider the proposal as amended such that the width of the portion of the pool surround still to be

constructed would be reduced to 2.5 feet. Mr. Zelley explained that the reduction would result in a proposed coverage of 16.8%, rather than 17.3%. On questioning, Mr. Fabian confirmed that the reduction would apply to the new surfaces (i.e., the portions of the patio/surround depicted on the Variance Plan dated March 28, 2021 in dark gray), and that there would be no disturbance of the already existing improvements.

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

### **DECISION**

25. After reviewing the evidence submitted, the Board, by a vote of 5 to 2, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief for the proposed impervious coverage exceedance, under both of the alternative bases pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

26. As to the positive criteria for the subsection "c(1)" or "hardship" variance for the requested impervious coverage, 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 undersized nature of the lot, together with the layout and configuration of Property, including that the dwelling has a side-loaded garage. The Board finds 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 that would be incurred by the Applicants if the zoning regulations were to be strictly enforced. 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).

27. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for the excessive lot coverage, the Board finds that the Applicants have satisfied their burden of demonstrating that the purposes of the Municipal Land Use Law will be advanced by the requested deviation from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal promotes a desirable visual environment, and otherwise promotes the general welfare. In this regard, the Board recognizes that the Applicants stipulated to reducing the size of the pool surround, constructing a rain garden for stormwater management, and relocating the existing non-conforming shed to a conforming location. The Board further recognizes that the existing buffering will mitigate the relatively modest visual detriment associated with the proposed improvements. 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, and the fact that the proposed improvements will eliminate the rebar pool cover anchor as a tripping hazard as well as provide safer access to the pool. As such, the Board finds that the Applicants have satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70(c)(2).

28. As to the negative criteria for 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 Master 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 finds that the Applicants have demonstrated that the proposed improvements will be sufficiently screened, stormwater runoff will be appropriately managed, and that the conditions stipulated to by the Applicants will further alleviate any detrimental impact of the proposed improvements on adjacent properties. The Board also recognizes, in this regard, 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 Master Plan or Zoning Ordinance, particularly since pools and patios 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 for variance relief pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2).

29. Based upon the foregoing, the Board finds that the Applicants have demonstrated both the positive and negative criteria for the requested lot coverage variance relief under both subsection (c)(1) and subsection (c)(2).

WHEREAS, the Board took action on this application at its meeting on August 4, 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 8th day of September, 2021, that the application of **MATTHEW and MICHELLE FABIAN**, 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 and other municipal obligations to date;
- (3) The Applicants shall relocate the existing shed to a conforming location;
- (4) The width of the portion of the pool patio/surround still to be constructed (i.e., the portion of the patio/surround depicted on the Variance Plan in dark gray and labeled “proposed paver patio”) shall be reduced to 2.5 feet, and the proposed lot coverage shall not exceed 16.8%;
- (5) Stormwater infiltration measures shall be provided in accordance with Section 21-42.11.b of the Ordinance. The proposed rain garden shall be subject to further review and approval by the Township Engineering Department prior to the issuance of a construction permit. Perc test results in support of the proposed stormwater infiltration measures shall be provided at that time;
- (6) A stormwater management easement deeded to the Township shall be provided for the proposed rain garden. The easement shall include a maintenance manual, which shall be subject to review and approval by the Township Engineering Department. The easement shall be prepared by the Township Attorney, executed by the Applicants, and recorded with the Somerset County Clerk prior to issuance of a construction permit;
- (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 submit a tree protection, removal and replacement plan, as applicable, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
- (9) The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission attached to the July 29, 2021 Review Memorandum of the Township Planner;
- (10) The Applicants shall redesign the proposed rain garden such that it is sized to address 3” of runoff from the new impervious cover and otherwise compliant with the municipal stormwater requirements. The Applicants shall also revise the plans to include grading in, and around, the rain garden, as well as calculations confirming the final volume of the system;
- (11) The Applicants shall revise the rain garden detail to provide that a soil log and permeability testing is required within the system footprint to confirm the absence of groundwater within two (2) feet of the bottom of the proposed infiltration



system and to confirm sufficient permeability to evacuate all collected runoff within 72 hours, per the New Jersey Best Management Practices Manual. The system may have to be redesigned to a gravity discharge system if the soil investigation cannot establish these parameters;

- (12) The Applicants shall revise the plans to reflect that the stormwater management system will capture roof runoff, rather than patio runoff, and such plan shall be subject to the review and approval of the Township Engineering Department;
- (13) The Applicants shall revise the plans to address the 6" conveyance pipe that discharges at grade, 25 feet above a stone filter strip located immediately adjacent to the rain garden;
- (14) The Applicants shall revise the plans to depict silt fence on the down gradient side of all of the proposed improvements;
- (15) 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;
- (16) 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
- (17) Pursuant to Section 21-5.10 of the Land Development Ordinance, the variance granted herein shall expire unless such construction or alteration permitted by the variance has actually commenced within one year of the date of this Resolution.

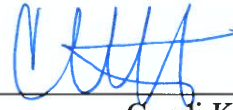
ROLL CALL VOTE:

Those in Favor: Cambria, Genirs, Kraus, Pochtar

Those Opposed: NONE

Those Ineligible: Baumann, Tancredi

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 September 8, 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: September 8, 2021.

**ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**GREGORI VERB and CARA WILLIAMS-VERB  
Case No. ZB21-024**

**RESOLUTION**

**WHEREAS, GREGORI VERB and CARA WILLIAMS-VERB** (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 pool with an adjoining waterfall/slide feature, pool house, patio adjoining the pool/pool house, a patio behind the existing dwelling, and various walkways, on property identified as Block 11501, Lots 11 and 12<sup>1</sup> on the Official Tax Map of the Township of Bernards, more commonly known as 33 Long Road:

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 to locate an in-ground swimming pool in the front yard, rather than the side- or rear-yard, in violation of Section 21-18.2 of the Ordinance; and

**WHEREAS**, a public hearing on notice was held on such application on August 4, 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 Property consists of two adjoining lots created pursuant to a minor subdivision approved by the Planning Board in 1988. Lot 11 is currently improved with a two-story single-

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<sup>1</sup> The Applicants stipulated to merging Lot 11 and Lot 12 as part of the application.

family dwelling, a two-story masonry garage, a wood deck, and a stone driveway. Lot 12 was not developed and contains only portions of the Applicants' driveway. The majority of the proposed improvements are located on Lot 12 in the general area where a dwelling would have been constructed. As part of the current proposal, Lot 11 and Lot 12 are to be merged into a single lot (the "Property").

2. The Property is an irregularly shaped 6.18 acre lot located in the R-3 Residential Zone with frontage on Long Road. It is constrained by a 30 foot wide drainage and conservation easement that runs throughout the Property.

3. The Applicants propose to construct a 779 square foot, irregularly shaped, swimming pool with an adjoining waterfall/slide feature, a 36 foot by 36 foot (1,296 square foot) pool house, patios adjoining the pool/pool house and to the rear of the existing dwelling, and various walkways.

4. The proposed pool location requires a variance because it does not comply with Section 21-18.1 of the Ordinance, which states "the pool shall be located behind the rear building line of existing residential structures on adjoining lots." The Property adjoins a total of four lots, including a very small, unbuildable lot of unknown ownership to the south side, and Somerset County open space to the west/rear. The proposed pool is not to the rear of the dwellings on Lot 10 (to the north) and Lot 14 (to the southwest/rear).

5. The proposal requires additional variance relief because it does not comply with Section 21-18.2 of the Ordinance, which prohibits swimming pools in a front yard. As set forth in the Ordinance, the "front yard" on any lot is based on the location of the dwelling on the lot, i.e. all area closer to the street than the dwelling is considered front yard. Given the location of the Applicants' dwelling, which was constructed 327.2 feet from Long Road due to the environmental

constraints which consume the front of the Property, the majority of the Property ( $\pm 75\%$ ) constitutes a front yard. In order for the proposal to comply with the front yard prohibition, the proposed “swimming pool,” which by ordinance definition includes the pool, pool house and pool patio, would have to be at least 327.2 feet from Long Road. Here, the Applicants propose distances from Long Road of approximately 283 feet for the pool patio, approximately 295 feet for the pool, and approximately 296 feet for the pool house.

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

7. The Applicants’ proposal is depicted on Pool Plans prepared by Deborah D’Amico, P.E., dated April 14, 2021, last revised July 6, 2021, same consisting of three (3) sheets; Architectural Plans prepared by David B. Hartdorn, A.I.A., dated May 15, 2021, unrevised, same consisting of two (2) sheets; a Landscape Plan prepared by Dominick Stanzione, of Dominick Stanzione Designs, LLC, dated October 2019, unrevised, same consisting of one (1) sheet; a Wetland Location Plan prepared by April 8, 2020, last revised March 24, 2021, same consisting of one (1) sheet. The Applicants also submitted a Survey prepared by Richard C. Mathews, P.L.S., dated May 31, 2018, unrevised, same consisting of one (1) sheet; a Freshwater Wetlands Letter of Interpretation (“LOI”): Line Verification from the New Jersey Department of Environmental Protection (“NJDEP”) dated May 10, 2021; a letter from Deborah D’Amico, P.E., dated July 14, 2021, regarding the conservation easements; and a compendium of four (4) photographs of the Property, same consisting of one (1) sheet.

8. 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.

9. Jordan Scott Friedman, Esq., of Vastola & Sullivan, entered his appearance on behalf of the Applicants. He described the proposed improvements and confirmed that the two lots

that comprise the Property will be merged as part of the application. Mr. Friedman explained that the Applicants are seeking two variances for the proposed pool because it is not located to the rear of the adjacent dwellings and is technically located in the front yard.

10. Gregori Verb, one of the Applicants, having an address of 33 Long Road, was duly sworn according to law. Mr. Verb testified that he resides at the Property with his wife, children, and their dog. He explained that both his wife and his daughter enjoy swimming and the proposed improvements will allow them to swim year-round. Mr. Verb further explained that the Property is heavily wooded and sloped. He confirmed that he had taken the photographs of the Property submitted with the application materials in May of 2021 and testified that they constitute an accurate depiction of the Property as it presently exists.

11. Mr. Verb described the proposed improvements and explained that he and his family enjoy being outside and do not want to change the character of their Property. He explained that the pool cannot be located elsewhere on the Property because of the slopes and easements. Mr. Verb further explained that the proposed pool location is flatter than other portions of the Property and will not result in the disturbance of environmentally constrained portions of the Property. He contended that the location of the pool, the distance and the topography, as well as the wooded nature of the lot, will make it very difficult for any of the adjacent neighbors to see the improvements. Mr. Verb explained that the most affected lot, Lot 14, is owned by his sister and confirmed that she had no objections to the proposal. He further explained that, by merging Lot 11 and Lot 12, the Applicants will eliminate the existing non-conforming side-yard and driveway setback deviations.

12. Mr. Verb stipulated, as a condition of approval, to complying with the comments and requirements set forth in the July 29, 2021 Review Memorandum prepared by the Board

Planner, Mr. Schley. On discussion of Comment 6 regarding the cupola, Mr. Verb confirmed that the cupola and the chimney meet the height exception criteria set forth in Section 21-9.5 of the Ordinance. Mr. Schley confirmed that no additional variance relief is required for same.

13. On questioning as to whether the proposed improvements would render the Property out of character with the neighborhood, Mr. Verb contended that it would not. He testified that the soil excavated to construct the pool would be used to create a mound to tie the improvements into the native surroundings. The Board Engineer, Mr. Quinn, noted that if the soil is going to be used as a berm, same should be reflected on the grading plan. On questioning, Mr. Verb confirmed that there will not be cooking facilities installed as part of the proposal.

14. Deborah D'Amico, P.E., having a business address of 68 North Bridge Street, Somerville, New Jersey, was duly sworn according to law, provided her qualifications, and was accepted by the Board as an expert in the field of civil engineering. Ms. D'Amico testified that she worked closely with the Applicants' pool contractor and landscaper when she did the plans. She explained that the Applicants obtained an LOI and determined that all of the environmental constraints are primarily located in the front of the Property. Ms. D'Amico further explained that the Applicants determined that a 50-foot-wide riparian zone would be encompassed within the wetlands conservation easement. She testified that the Applicants' proposal will not impact the environmentally constrained portions of the Property

15. Ms. D'Amico testified that the pool cannot be located to the rear of the Applicants' dwelling because there is insufficient space for same. She explained that the path designated on the Wetland Location Plan as "driveway extension per homeowner" is a dirt path, rather than a stone driveway. On questioning, Mr. Schley explained that the proposed pool is technically in the front yard because there is a slight curve in Long Road and the "front yard" is defined as the

“portion of the lot situated between any street right-of-way or between a line drawn parallel to and 25 feet from the center line of any street, whichever is greater, and a second line drawn parallel to same through the portion of the principal building located closest to the street.” On further questioning, Ms. D’Amico testified that there is one possible conforming (i.e. not in the front yard) location for the pool, but that it is already improved with a garage/driveway.

16. Ms. D’Amico confirmed that the Applicants can comply with all of the comments and requirements set forth in Mr. Schley’s July 29, 2021 Review Memorandum and Mr. Quinn’s July 30, 2021 Review Letter. She confirmed that the pool house is not intended to be used as a dwelling and that the Applicants are not seeking to increase the size of the septic system.

17. No member of the public commented on, or objected to, the Applicants’ proposal.

### **DECISION**

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

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

19. As to the positive criteria for the subsection “c(1)” or “hardship” variance for the requested pool location deviations, 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 as the owners of the Property. Here, the Property adjoins a total of four lots, and the proposed pool is not to the rear of the dwellings on Lot 10 and Lot 14. As to Lot 10 (25 Long Road) to the north, the dwelling faces the Property making it impossible to



comply with the pool location requirement that all pools be located to the rear of the adjacent dwellings. As to Lot 14 (61 Long Road) to the southwest, the location of the dwelling is such that the pool would have to be located closer to Long Road and closer to the on-site environmentally sensitive areas (i.e., steep slopes, wetlands, and stream buffers). As to the location of the pool within a “front yard,” the Board recognizes the “front yard” on any lot is based on the location of the dwelling on the lot, i.e. all area closer to the street than the dwelling is considered front yard and that, given the location of the Applicants’ dwelling, which was constructed 327.2 feet from Long Road due to the environmental constraints, the majority of the Property (approximately 75%) constitutes a front yard. As such, the Board finds that complying with the Ordinances would result in undue hardship upon the Applicants and that the hardship that would result from the strict application of the zoning ordinance would not be the result of conditions that were “self-created” by the Applicants or any predecessor-in-title. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(1).

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

20. As to the positive criteria for subsection “c(2)” or “flexible c” variance relief for the pool location, 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 enhances the housing stock, promotes a desirable visual environment, and otherwise promotes the general welfare. The Board further recognizes that it is impossible to locate the proposed pool in a fully conforming location, and locating it in a more conforming location would require significant tree removal and additional disturbance of environmentally constrained land. Moreover, locating the

pool far from the dwelling renders it unsafe for the family and guests, particularly young children. As such, the Board finds that locating the pool in the proposed nonconforming location constitutes a better planning alternative than locating it in a more conforming location. The Board also recognizes that the Applicants have stipulated to merging Lots 11 and 12 and that same will eliminate the existing side-yard setback and driveway setback deviations, constituting an additional benefit. As such, the Board further finds that the benefits of the proposal substantially outweigh the relatively modest detriment associated therewith, particularly given the stipulated to conditions set forth below. Accordingly, the Board finds the Applicants have satisfied the positive criteria, pursuant to N.J.S.A. 40:55D-70(c)(2).

**Negative Criteria:**

21. As to the negative criteria required for the variance relief, pursuant to subsections c(1) and c(2), the Board finds that the Applicants have demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master 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 out of character with the existing neighborhood, and will not have a significant detrimental impact on the surrounding properties. The Board notes that the proposed pool is approximately 500 feet from the dwelling on Lot 10 to the north, and approximately 375 feet from the dwelling on Lot 14 to the southwest side/rear. As such, the Board finds that the pool will be sufficiently screened by the existing woods, the size of the Property itself, and the topography, 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 many of the dwellings in the neighborhood also have pools, such that the proposal will be consistent with

the existing neighborhood. Moreover, the Board recognizes that no member of the public objected to the Applicants' proposal.

22. 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 Township's Master Plan or Zoning Ordinances, particularly since pools are permitted structures in the R-3 Zone. 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 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. Accordingly, the Board finds that the Applicants have satisfied the negative criteria, pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2), for the pool location variance relief.

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

**WHEREAS**, the Board took action on this application at its meeting on August 4, 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 8th day of September, 2021, that the application of **GREGORI VERB and CARA WILLIAMS-VERB**, 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 and other municipal obligations prior to issuance of any zoning or building permits;
3. Details of the pool house, including any proposed cooking facilities and the proposed connection to the septic system, shall be subject to further Township review and approval, including review/approval by the Township Zoning Officer and Health Department;
4. The Applicants shall revise the plans to clarify the area shown on the grading plan as driveway extension and the area shown on the landscape plan as parking area and same shall be subject to the review and approval of the Township Engineering Department;
5. The Applicants shall revise the variance/grading plans to include the location of the proposed pool equipment, which appears to be shown (but not labeled) only on the landscaping plan;
6. The stream buffer conservation areas associated with the watercourses that traverse the Property shall be contained within a stream buffer conservation easement deeded to the Township. The stream buffer conservation area/easement boundaries shown on the plans shall be subject to further review and approval by the Township Engineer. The easement shall be prepared by the Township Attorney, executed by the Applicants, and recorded with the Somerset County Clerk prior to issuance of a construction permit;
7. All wetlands and wetlands transition areas shall be contained within a wetlands conservation easement deeded to the Township. The easement shall be prepared by the Township Attorney, executed by the Applicants, 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;
8. The Applicants shall revise the plans to show riparian zones required pursuant to NJDEP Flood Hazard Area Control Act Rules, and the Applicants shall submit documentation to the Township Engineering Department demonstrating compliance with those rules prior to issuance of a construction permit;
9. The Applicants shall file a deed merging Lots 11 and 12 into a single lot, to be known as Lot 11.01. The deed shall be subject to review and approval by the Township Engineering Department and recorded with the Somerset County Clerk prior to issuance of a construction permit;
10. Any proposed exterior lighting shall be directed downward or otherwise shielded so that glare, directed light or reflection will not be a nuisance to adjoining properties. The pool

house cupola shall not be illuminated;

11. The Applicants shall submit a tree protection, removal and replacement plan, as applicable, same to be subject to the review and approval of the Township Engineering Department prior to any land disturbance;
12. 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;
13. The Applicants shall use the “best management practices” available when discharging pool water, consistent with the recommendations of the Environmental Commission;
14. The Applicants shall obtain certification by the Somerset-Union Soil Conservation District and shall revise the plans to note same;
15. The Applicants shall revise the plans to clarify how stormwater runoff will be directed into the proposed pit as no inlet structures or conveyance of any kind is depicted on the current plans;
16. Because the drainage pit is situated in an area with an approximately 4-foot grade drop, the Applicants shall revise the plans to include a detail reflecting the need to maintain a level bottom for the pit in order to utilize the full volume rather than holding a uniform depth across the grade drop;
17. The Applicants shall revise the detention system detail to note that a soil log and permeability testing is required within the system footprint to confirm the absence of groundwater within two (2) feet of the bottom of the proposed infiltration system and confirm sufficient permeability to evacuate all collected runoff within 72 hours, per the New Jersey Best Management Practices Manual. The system may have to be redesigned to a gravity discharge system if the soil investigation cannot establish these parameters and any such redesign shall be subject to the review and approval of the Township Engineering Department;
18. The Applicants’ engineer shall consider providing a gravity discharge and small scour hole downstream of the proposed infiltration system in order to provide a stable overflow;
19. The Applicants shall revise the Variance Plan to label the proposed pool compliant fence with self latching gate;
20. The Applicants shall revise the Variance Plan to note the removal of the existing lot line and provide the consolidated lot area and callout;
21. The Applicants shall revise the Variance Plan to identify the proposed pool equipment pads in plan view and summary;

22. The Applicants, if requested to do so, shall provide additional grading information, as well as information about the top and bottom wall grades to the Township Engineering Department prior to the issuance of a permit;
23. The Applicants shall revise the limit of disturbance shown on the plans to include the patio and wall construction behind the existing dwelling. The Applicants shall extend the stabilized construction entrance pad, if necessary, as determined by the Township Engineering Department;
24. 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;
25. 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
26. 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 variances has actually commenced within one (1) year of the date of this Resolution.

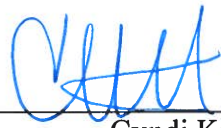
ROLL CALL VOTE:

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

Those Opposed: NONE

Those Ineligible: Pavlosky

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 September 8, 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: September 8, 2021.

**ZONING BOARD OF  
ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**JOHN W. UTZ  
Case No. ZB19-001**

**RESOLUTION -WITHDRAWAL**

**WHEREAS, JOHN W. UTZ** (the "Applicant") proposed to construct a single family dwelling located on property designated as Block 11102, Lot 3, on the Township Tax Map, more commonly known as 33 Rickey Lane; and

**WHEREAS**, the application, having been deemed incomplete on February 6, 2019; and

**WHEREAS**, by e-mail dated August 23, 2021, Frederick B. Zelley, on behalf of the Applicant, requested that the application be withdrawn without prejudice; 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"; 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-l(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 8<sup>th</sup> day of September, 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, Cambria, Genirs, Kraus, Pavlosky, Pochtar, Tancredi

Those Opposed:       NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on September 8, 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: September 8, 2021



**ZONING BOARD OF  
ADJUSTMENT  
TOWNSHIP OF BERNARDS**

**PYRAMID HEALTHCARE INC.  
Case No. ZB21-025**

**RESOLUTION -WITHDRAWAL**

**WHEREAS, PYRAMID HEALTHCARE INC.** (the "Applicant") requested an interpretation of the E-3 Zone use in order to convert an existing building located on property designated as Block 2401, Lot 4, on the Township Tax Map, more commonly known as 170 Mt. Airy Road into a Residential Substance Use Disorders Treatment Facility; and

**WHEREAS,** by e-mail dated August 26, 2021 from Thomas J. Malman, Esq., on behalf of the Applicant, requested that the application be withdrawn without prejudice; 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"; 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 8<sup>th</sup> day of September, 2021, that the request by the Applicant, for voluntary dismissal without prejudice of its application, as aforesaid, be granted, subject to the following condition:

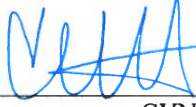
The Applicant shall post funds with the Township sufficient to satisfy any and all deficiencies in the Applicant's escrow account and shall remain obligated to replenish that escrow account and otherwise reimburse the Township for all expenses incurred by it and its professionals in connection with the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

ROLL CALL VOTE:

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

Those Opposed:        NONE

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting on September 8, 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: September 8, 2021