

**BERNARDS TOWNSHIP
BOARD OF ADJUSTMENT
MINUTES
Regular Meeting
April 4, 2012**

In the absence of the chair, the vice-chairman, Mr. Plaza, called the meeting to order at 7:34 p.m.

ROLL CALL:

Members present: Harris, Piedici, Rhatican, Vogt, Carlucci, Alper, Plaza

Members absent: Orr, Ross

(absences of Mr. Orr and Mr. Ross excused; see minutes of May 9, 2012 meeting)

Members late: none

Board Attorney Steven Warner, Esq. and Board Planner David Schley were also present.

OPEN MEETING STATEMENT

"In accordance with the requirements of the Open Public Meetings Law, notice of this regular 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, Bernardsville, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on January 5, 2012 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 p.m. and no new witnesses or testimony heard after 10:30 p.m."

APPROVAL OF MINUTES

The motion was made by Ms. Piedici and seconded by Mr. Rhatican to approve the minutes of March 7, 2012, regular meeting, as drafted.

Roll call:

Aye: Harris, Piedici, Rhatican, Vogt, Carlucci, Plaza

(Ms. Alper was ineligible to vote)

Motion carried

APPROVAL OF CHARGES AGAINST ESCROW ACCOUNTS

The motion was made by Mr. Rhatican and seconded by Ms. Piedici to approve the charges submitted by David Schley for March 2012, Steven Warner, Esq. for March 2012, and John Belardo, Esq. for February 2012.

Roll call:

Aye: Harris, Piedici, Rhatican, Vogt, Alper, Carlucci, Plaza

Motion carried

APPROVAL OF RESOLUTIONS

RESOLUTION – Estate of Eleonore R. Croot – Block 3601, Lot 4 – Bulk Variances

The motion was made by Mr. Rhatican and seconded by Ms. Piedici to approve the resolution as drafted.

Roll call:

Aye: Harris, Piedici, Rhatican, Carlucci, Plaza
(Mr. Vogt and Ms. Alper were ineligible to vote.)

Motion carried

RESOLUTION – Pruskowski, James & Melissa – Block 7702, Lot 21 – Bulk Variance

The motion as made by Mr. Rhatican and seconded by Mr. Harris to approve the resolution as drafted.

Roll call:

Aye: Harris, Rhatican, Vogt, Carlucci, Plaza
(Ms. Piedici and Ms. Alper were ineligible to vote.)

Motion carried

RESOLUTION - McCormick, Edmund J. and Hong Z. – Block 7201, Lot 29 –Bulk Variance

The motion was made by Mr. Vogt and seconded by Ms. Carlucci to approve the resolution as drafted.

Roll call:

Aye: Harris, Rhatican, Vogt, Carlucci, Plaza
(Ms. Piedici and Ms. Alper were ineligible to vote)

Motion carried

COMPLETENESS REVIEW & PUBLIC HEARING – DaSILVA, CARLOS & TEJAL – Block 6303, Lot 50 – 10 Stoneview Court – Bulk Variance

Mr. Carlos DaSilva and Mr. Schley were sworn in. Mr. DaSilva said his house was built in 1732 and had no basement. He wants to build a room over the existing garage to be used as a gym/game room. He noted that the creation of Stoneview Court in 1997 gave this lot two front yards. He said he installed a gravel driveway five years ago without a permit because his contractor said gravel did not count towards lot coverage. His current lot coverage is at 18.6%. Mr. Schley clarified that the Planning Board permitted lot coverage of 15.9% on this lot at the time of the 1997 subdivision. Mr. Schley said that the zoning officer would be responsible for checking that the lot coverage was reduced; he recommended between 60 to 90 days for this to be accomplished.

Public hearing was opened for questions of this witness; hearing none, the public portion of this hearing on this application was closed.

Board members noted their support of this application, noting the lack of visual intrusion.

The motion was made by Ms. Piedici and seconded by Mr. Vogt to deem the application complete and to direct the Board Attorney to draft a memorializing resolution approving the application subject to the applicant removing existing impervious material to get to 15.9% lot coverage.

Roll call:

Aye: Harris, Piedici, Rhatican, Vogt, Alper, Carlucci, Plaza
Motion carried

COMPLETENESS REVIEW & PUBLIC HEARING – NATALE, KAREN – Block 11401, Lot 29 – 115 Emerald Valley Lane – Appeal of Zoning Officer’s Decision & Bulk Variance

The applicant was represented by Harvey Fruchter, Esq. Ms. Karen Natale, 115 Emerald Valley Lane, and Mr. Schley were sworn in. Mr. Fruchter explained that Ms. Natale installed four 5-ft tall pillars adjacent to a split-rail fence.

Ms. Natale testified that these pillars are similar to others on Emerald Valley Lane and that they are not connected to the fence. She said their purpose was decorative. Mr. Fruchter challenged the characterization of these pillars as a fence stating that they did not enclose an area. Board members noted the close proximity of these pillars to the existing fence and the size of the pillars.

Mr. Schley said the pillars had been constructed about two years ago. The situation was only recognized when the zoning officer was asked to inspect the driveway. Mr. Schley said for the past 15 years that similar driveway piers had been considered by the zoning officer to be regulated as fences or walls. Mr. Warner cited case law which says a long-standing interpretation of the zoning ordinance should be given great weight in the Board’s decision. Mr. Fruchter maintained that the Board can decide differently.

Mr. Fruchter maintained that, if the Board decides the pillars constitute a fence, relief should be granted from the height requirement for a fence in a front yard because the pillars are aesthetically pleasing and they cause no detriment to the neighborhood.

Ms. Natale said the pillars help to locate her driveway and she does not intend to place lights on the pillars.

Public hearing was opened for questions of the applicant. Hearing none, the public portion of the hearing on this application was closed.

Board members found the pillars to be part of the fence but also noted that they were less obtrusive than the ones installed on the lot across the street.

The motion was made by Ms. Alper and seconded by Ms. Piedici to uphold the zoning officer's decision.

Roll call:

Aye: Harris, Piedici, Rhatican, Vogt, Alper, Carlucci, Plaza
Motion carried

The motion was made by Ms. Alper and seconded by Ms. Piedici to deem the application complete and to direct the Board Attorney to draft a memorializing resolution approving the variance application subject to compliance with the comments on Mr. Schley's March 29, 2012 memo, including that the applicant shall obtain zoning permit for the pillars and the fence.

Roll call:

Aye: Harris, Piedici, Rhatican, Vogt, Alper, Carlucci, Plaza
Motion carried

COMPLETENESS REVIEW & PUBLIC HEARING – INGAL, CATHERINE M. – Block 7002, Lot 19 – 92 Bullion Road – Bulk Variance

Catherine Ingal, 92 Bullion Lane and Mr. Schley were sworn in. Ms. Ingal said that she wants to install a pool in her rear yard. Mr. Schley said that the proposed pool cannot comply with ordinance requirements due to the locations of the houses on the two adjacent lots. Ms. Ingal said that none of her neighbors had expressed any objections. She agreed to provide a tree replacement plan and water quality measures as per Mr. Schley's March 29, 2012 memo.

Board members noted that there was no memo from the Environmental Commission submitted for this application and asked that Ms. Ingal refer to the Best Management Practices (BMP's) for pools as posted on the Township website.

Public hearing was opened for questions and comments on this application. Hearing none, the public portion of this hearing on this application was closed.

Board members noted their support of this application.

The motion was made by Mr. Vogt and seconded by Ms. Alper to deem the application complete and to direct the Board Attorney to draft a memorializing resolution approving the application subject to compliance with comments from Mr. Schley's March 29, 2012 memo including providing water quality measures, a tree replacement plan, and following BMP's for pool water discharge.

Roll call:

Aye: Harris, Piedici, Rhatican, Vogt, Alper, Carlucci, Plaza
Motion carried

Discussion – 2011 Annual Report & Recommendations

Mr. Plaza asked that this discussion be tabled to next month's meeting when Mr. Orr would be present.

Discussion – Vacancy Law

Mr. Plaza said that a board member's position may be deemed vacant when a board member accumulates four consecutive unexcused absences. He asked that Board members contact the Board secretary, or the Board Chair, in advance of the meeting if they know they are going to be absent, and request that the absence be excused.

Mr. Warner stated the statute says that the only reason a Board must excuse a member is a medical reason though the Board may also excuse an absence for a non-medical reason. Mr. Warner is planning to draft a revision and clarification to the Board's rules and regulations.

Mr. Plaza recommended that the Board's votes to excuse absences will be recorded when the minutes of that meeting are approved.

Comments by Staff

Mr. Schley asked for volunteers to serve on the landscape committee for Millington Baptist Church. Mr. Harris and Ms. Alper volunteered and Mr. Orr was volunteered by his fellow Board members.

The public meeting was adjourned at 9:27 p.m., there being no further business to discuss.

Respectfully submitted,

Frances Florio
Secretary to the Board

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**ESTATE OF ELEONORE R. CROOT
Case No. ZB11-015**

RESOLUTION

WHEREAS, the ESTATE OF ELEONORE R. CROOT (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following bulk variances and a “zone two” stream buffer conservation area waiver in connection with the construction of a two-story, 2,464 square foot single-family dwelling, with an attached two-car garage, on a vacant lot identified as Block 3601, Lot 4 on the Tax Map, more commonly known as 414 South Finley Avenue:

(1) A variance for a proposed improvable lot area of 3,040 square feet, whereas the minimum required improvable lot area in the R-4 (1 acre) residential zone is 10,000 square feet, pursuant to Section 21-10.4(b) and Table 401-A of the Land Development Ordinance;

(2) A variance for a proposed front-yard setback from Rocky Lane of 60 feet, whereas the minimum required front-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;

(3) A variance for a proposed front-yard setback from South Finley Avenue of 50 feet, whereas the minimum required front-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;

(4) A variance for a proposed side-yard setback of 15 feet from zone one of the stream buffer, whereas the minimum side-yard setback requirement in an R-4 (1 acre) residential zone is 20 feet, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

(5) A variance for a proposed rear-yard setback of 45 feet from zone one of the stream buffer, whereas 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; and

WHEREAS, public hearings on notice were held on such application on January 4 and March 7, 2012, and a publicly noticed site visit was conducted on January 21, 2012, at which times interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board reviewed the application and deemed it to be complete.
2. The site is a 2.193 acre corner lot with 236 feet of frontage on Rocky Lane and 563 feet of frontage on South Finley Avenue. The lot is vacant and wooded, and is traversed by an unnamed tributary to the Passaic River (the "Property"). The Property has more than double the minimum lot area required in the R-4 (1 acre) residential zone, however, the majority of the Property is encumbered by Township-regulated stream buffers and NJDEP-regulated wetlands, wetlands transition areas, and riparian zones.
3. The Applicant proposes to construct a two-story, 2,464 square foot single-family dwelling, with an attached two-car garage, on the Property.
4. The Applicant's proposal is depicted on a Variance Plan prepared by Kevin G. Page, P.E., P.P., of Page Engineering Consultants, P.C., dated July 7, 2011, same consisting of 2 sheets (existing conditions map and conceptual lot development plan). The Applicant's proposal also is depicted on architectural drawings dated January 10, 2011, same consisting of 3 pages (front elevation, main level plan and upper level plan).

5. The requested variances for the minimum improvable lot area, front-yard, side-yard and rear-yard setbacks all fall within the criteria of N.J.S.A. 40:55D-70(c).

6. The Township Environmental Commission, by Memorandum dated August 12, 2011, recognized that the majority of the lot is encumbered by wetlands and streams with only approximately 25% available for development, such that adherence to the stream buffer ordinance requirement limits the ability to develop a conforming home. The Environmental Commission commented that it believes that the impact of this development on the environment would be contradictory to the stream buffer conservation ordinance, which limits or prohibits certain activities, including erecting any permanent structure, and therefore, does not support any intrusion into the stream buffer conservation area. In addition, the Environmental Commission noted that it did not see a tree removal/replacement plan or a tree removal permit submitted with the application, and that any replacement trees should be native hardwood species whenever practicable.

7. By letter dated July 29, 2011, the Somerset County Planning Board advised that the subject application does not require County Planning Board action or approval.

8. By letter dated March 4, 2011, the Division of Land Use Regulation of the New Jersey Department of Environmental Protection (NJDEP) issued a Freshwater Wetlands Letter of Interpretation (LOI) and Authorization for Freshwater Wetlands Transition Area Waiver, determining, *inter alia*, that (1) the freshwater wetlands on the Property are of intermediate resource value and a standard transition area of 50 feet is required adjacent to these wetlands, (2) the submitted plans show a modification to this standard transition area through means of a

transition area averaging plan, and (3) the transition area waiver is subject to specific conditions set forth therein.

9. The Applicant also submitted an “Individual Permit” from the NJDEP, dated December 1, 2010, granting permission for the construction of a single-family dwelling and grading within the subject riparian zone.

10. David Schley, A.I.C.P./P.P., the Township/Board Planner, was duly sworn according to law.

11. Judith Pasnik, 41 Walnut Circle, Basking Ridge, was duly sworn according to law. Ms. Pasnik testified that she is one of the daughters of the late Eleonore R. Croot and her parents owned the Property. She recalled that her father subdivided a large tract on Rocky Lane, of which the Property was a portion thereof, during the late 1940’s or early 1950’s. The Applicant, through its counsel, introduced into evidence, as Exhibit A-1, a copy of a Deed from Mary Louise Bayles to Edward J. Croot, the husband of the late Eleonore R. Croot and Ms. Pasnik’s father, dated December 16, 1946, by which Mr. Croot acquired the larger tract from which the subject lot was subdivided. Ms. Pasnik testified that her parents intended to build a house for themselves on the Property due to its proximity to the train station. She further testified that three houses were constructed on other lots on Rocky Lane, however, the Property was impacted by the construction of a traffic light at the corner of South Finley Avenue and Cross Road.

12. Kevin Page, P.E., P.P., of Page Engineering Consultants, P.P., Warren, New Jersey, was duly sworn according to law, provided his background and credentials and was accepted by the Board as an expert in the field of civil engineering, having previously been so

accepted by the Board on numerous occasions. Mr. Page described the Property in terms of its zoning, location at the intersection of South Finley Avenue and Rocky Lane, its acreage and its numerous environmental constraints. He introduced into evidence, as Exhibit A-2, a portion of sheet 2 of the Variance Plan that he prepared, depicting the Property and the properties within a 200 foot radius of same, together with a designation as to the lot area of each. Mr. Page noted that the dwellings on Rocky Lane had between 40 and 50 foot front-yard setbacks, rather than the minimum required 75 feet. He explained that, due to the Township requirement for stream buffer conservation areas, there was an insufficient building envelope and insufficient improvable lot area to construct a dwelling on the Property.

13. Mr. Page described the location of the proposed dwelling as shown on the plans and testified that the Applicant would work with the Township Engineering Department on the appropriate landscape plantings along South Finley Avenue. He also testified that the Applicant proposed a fence to demarcate the proposed conservation easement area and to protect same from accidental disturbance.

14. Mr. Page addressed the comments on the Board Planner's December 29, 2011 Memorandum, and the Applicant stipulated, as conditions of approval, to compliance with comments 4 through 13 of same. Mr. Page also testified that he would submit a more detailed landscape plan and stream buffer management plan.

15. On questioning by a member of the public, Mr. Page testified regarding the distances from the proposed dwelling on the Property to adjacent and nearby dwellings along Rocky Lane and on Cross Road, as well as to the Lyons railroad station.

16. The Applicant conducted a publicly noticed site visit on January 21, 2012, prior to which the Applicant's professionals staked the Property so as to designate the boundaries of (1) the environmental constraints (including the NJDEP riparian zone and wetlands buffers and the Bernards Township stream buffer conservation area), (2) the proposed building envelope and (3) the footprint of the proposed dwelling. The Applicant also submitted to the Board a copy of a colorized Plan Sheet depicting same.

17. David Schley, the Board Planner, testified that, based upon his investigation of the land use records of the Township, the Property has been in existence since (i.e., the subdivision occurred prior to) at least 1967. Mr. Schley, moreover, testified that the improvable lot area requirement and the stream buffer ordinance requirement, which together require the Applicant to pursue the variance relief sought in this case, were adopted in 2006 and 2001, respectively, and the NJDEP wetlands requirements, which also impact the need for the variance relief sought by the Applicant, were adopted sometime in the 1980's.

18. Mr. Page, the Applicant's civil engineer, having been previously sworn, testified that, based upon his preliminary investigations and soil testing, the Property was suitable for drywells. As such, he anticipated that the Applicant would need no relief from the Township stormwater management plan requirements.

19. In response to a Board Member's request, Mr. Page testified that there was approximately 20,000 square feet of usable area outside of the riparian buffer area and other areas of environmental constraint on the Property.

20. Mr. Page testified regarding the Applicant's proposed enhancements to Zone 1 so as to obtain relief from the requirement for a Zone 2 stream buffer conservation area. Mr. Page

testified that the Applicant would construct a fence demarcating the Zone 1 stream buffer conservation area so as to avoid inadvertent trespassing and land disturbance. Mr. Page also testified that the Zone 1 area would be further enhanced by landscaping pursuant to his conversations with the Applicant's landscape architect. In this regard, Mr. Page introduced into evidence, as Exhibit A-3, a Landscape Plan prepared by Quercus Studios, dated February 28, 2012, same consisting of one sheet. Mr. Page, on behalf of the Applicant, stipulated that the Applicant would submit a signed and sealed Landscape Plan (Exhibit A-3) prior to the issuance of any building permits. Mr. Page also explained to the Board that the Land Development Ordinance would permit the Zone 2 stream buffer conservation area to be used for passive recreational and other similar uses.

21. Mr. Page, on behalf of the Applicant, next introduced into evidence, as Exhibit A-4, a plan sheet entitled "Rocky Lane Wetlands Exhibit". He testified that he prepared Exhibit A-4 based upon the NJDEP GIS maps and that the exhibit depicts the location of wetlands on both sides of Rocky Lane. Mr. Page concurred with the Board Planner's timelines for the adoption of various municipal and state environmental regulations and clarified that, based upon his personal knowledge and experience, the NJDEP began utilizing wetland buffer areas in the very late 1980's.

22. Mr. Page testified that of the 8 other lots on Rocky Lane, only 1 of the lots satisfied the 75-foot front-yard setback requirement. He further testified that most of these lots were approximately 0.5 acres, whereas the Property has a lot area of greater than 2 acres. Mr. Page testified that the dwelling closest to the proposed dwelling on the Property will be approximately 140 feet away, the distance between the proposed dwelling and the southerly

(Rocky Lane) property line will be more than 60 feet and the distance between the proposed dwelling and the rear-yard property line will be more than 360 feet.

23. The Applicant's counsel, on behalf of the Applicant, stipulated, as a condition of approval, that such approval shall be contingent on the Applicant offering the Property for sale to the owners of adjoining Lot 3, Block 3601, at fair market value, to be calculated as if all variance approvals have been obtained, and the adjoining owners refusing or failing to so acquire the Property at such terms.

24. Mr. Page and the Applicant's counsel, on behalf of the Applicant, stipulated, as conditions of approval, to the following:

a. The wetlands conservation easement shall reflect that the Applicant shall be obligated to maintain the 4 foot high, 3-rail fence proposed for protection to the remaining stream buffer area;

b. The proposed dwelling shall be substantially similar in character, design and orientation to the dwelling proposed on the applicable plans, including orienting the dwelling toward Rocky Lane, however, the location of the proposed garage shall be adjusted so as to increase the proposed setback from South Finley Avenue from 50 feet to 55 feet; and

c. The height of the proposed dwelling shall be no greater than 32 feet and the 1 ½ story garage portion of same shall be no greater than 22 feet in height.

25. David Zimmerman, P.P., the Applicant's professional planner, was duly sworn according to law, provided his background and credentials, and was accepted by the Board as an expert in the field of planning, having been previously so accepted by the Board. Mr. Zimmerman described the Property and the area surrounding same. He noted that the proposed

dwelling would be the first home constructed on Rocky Lane in about 40 or 50 years, it would be near to the railroad station and within walking distance to the Lyons Shopping Center, and most of the Property would remain in its natural state. Mr. Zimmerman testified regarding the numerous environmental constraints on the Property and characterized the variance application sought as a “classic c-1 hardship case”.

26. With respect to the front-yard setback deviation from Rocky Lane, Mr. Zimmerman introduced into evidence, as Exhibit A-5, an enlarged copy of Sheet 1 of the Variance Plan, with the footprint of the subject dwelling and the dwellings on the other lots along Rocky Lane, all of which footprints were highlighted. He explained that Exhibit A-5 was an attempt to depict a visual impression of the proposed dwelling in comparison to the existing dwellings along Rocky Lane. Mr. Zimmerman explained that the front-yard setback from Rocky Lane would be 60 feet to the porch, but actually 65 feet to the dwelling structure itself. He testified that the average front-yard setback from Rocky Lane for the other dwellings thereon was approximately 55 feet, such that he opined that the proposed dwelling’s front-yard setback from Rocky Lane would “fit in with the neighborhood”. Mr. Zimmerman also referenced page 30 of the “Land Use Plan Element” of the current Master Plan, which recommends that front-yard setbacks for new dwellings be generally equivalent to the average front-yard setbacks of the existing dwellings along the street.

27. With respect to the front-yard setback deviation from South Finley Avenue, Mr. Zimmerman testified that there already existed substantial landscape buffering along the Property line with South Finley Avenue, which would be augmented by the proposed landscape plan submitted by the Applicant.

28. With respect to the side- and rear-yard setback deviations, Mr. Zimmerman testified that same are as a result of the stream buffer conservation areas required by the existing environmental constraints on the Property. He also testified that the distance from the proposed dwelling to the nearest existing dwelling was 140 feet.

29. With respect to the minimum improvable lot area deficiency, Mr. Zimmerman, on behalf of the Applicant, introduced into evidence as Exhibit A-6, a portion of the plan sheet showing the Property with the proposed dwelling thereon highlighted in yellow. Mr. Zimmerman testified that the proposed dwelling would fit within the approximately 3,000 square foot improvable lot area envelope. He opined that the proposal fits within the spirit of the minimum improvable lot area ordinance.

30. Mr. Zimmerman also testified that he contacted the Tax Assessor's office and determined that the size of the proposed dwelling was comparable to that of the other houses in the neighborhood. Toward this end, Mr. Zimmerman introduced into evidence, as Exhibit A-7, a letter from the Office of the Tax Assessor, dated August 1, 2011, verifying the square footage of the properties within a 200 foot radius of the Property. On questioning by the Board Chairman, Mr. Zimmerman conceded that the proposed dwelling would be the largest home on Rocky Lane, and would be at least twice the size of several of the other homes on Rocky Lane. Mr. Zimmerman pointed out that most of the lots on Rocky Lane were only ½ acre, whereas the subject lot is more than 2 acres in size, and that the other homes were built more than 50 years ago when homes were built much smaller. In response thereto, the Board Chairman noted that a significant portion of the lot area of the Property actually is located to the rear of neighboring Lots 1, 2 and 3, such that the subject lot does not appear to be more than four times the size of

Lots 2 and 3 and twice the size of Lot 1. In reply, Mr. Zimmerman noted that the Property, nevertheless, is more than twice as wide as neighboring Lots 2 and 3.

31. The Applicant's counsel advised the Board that the photographs submitted with the application materials were recently taken by Ms. Pasnik's husband and that they accurately depict the lots and the dwellings thereon as they presently exist.

32. John Crane, 39 Decker Street, Basking Ridge, testified in support of the Applicant. Mr. Crane stressed that he is passionate in supporting homeowners' property rights. He introduced into evidence, as Exhibit S-1, a compendium of aerial photographs, tax maps, and portions of the Township's 2010 Master Plan. Mr. Crane testified that many of the lots in the subject neighborhood, including those that are located in what is often referred to as "Homestead Village", were noncompliant, including many having insufficient minimum improvable lot areas. He also pointed out that many of the properties in the subject neighborhood were deficient in front-yard setbacks even more so than would be the proposed dwelling. Mr. Crane also pointed out that the lot frontage was 240 feet and the width of the proposed dwelling 60 feet, such that the effective side-yard setbacks would total 180 feet, corresponding to 75% of the lot frontage, whereas the Master Plan and Zoning Ordinance [contemplate/require] only 50%.

33. The Applicant stipulated, as a condition of approval, to installing the evergreen trees depicted on the Landscape Plan at planting heights of between 8 and 10 feet, and in quantities and at locations subject to the discretion of the Township Engineering Department.

34. No member of the public objected to the application.

35. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicant has satisfied the burden of establishing its entitlement to (1) a "Zone Two Waiver"

under Section 21-14.4.b.3(d) of the Land Development Ordinance and (2) the requested improvable lot area and front-, side and rear-yard setback variances pursuant to N.J.S.A. 40:55D-70(c)(1).

36. First, with respect to the “Zone Two Waiver”, the Board finds that the stream buffer management plan submitted by the Applicant will eliminate the need for Zone Two, and same shall be waived consistent with Section 21-14.4.b.3(d). Pursuant to Section 21-14.4b.3(d): “If the applicant submits a stream buffer management plan, in consideration of Subsection 21-14.4a, that proves to the satisfaction of the approving authority that a proposed vegetative or other enhancement to Zone One will eliminate the need for a Zone Two or a portion of Zone Two, the approving authority shall waive the requirement for a Zone Two or a portion of Zone Two, provided that the approved stream buffer management plan is implemented by the applicant.” Here, the Board recognizes the benefits to be derived from the Landscape Plan submitted and agreed to by the Applicant which would, *inter alia*, enhance the Zone 1 stream buffer conservation area. Moreover, the Board recognizes the additional benefits to be derived from the Applicant’s stream buffer management plan, which includes the installation of a 4 foot high, 3-rail fence to protect the remaining stream buffer area. Since all of the remaining stream buffer area is located within a wetlands/wetland transition area, it will also be protected by the wetlands conservation easement stipulated to by the Applicant, a part of which will include the continued maintenance of the aforementioned fence. The Board notes that the Applicant has obtained from NJDEP approvals to construct the proposed dwelling within a wetlands transition area (by way of a transition area averaging plan), and within a riparian zone (by way of an individual permit).

37. Second, with respect to the positive criteria for “c(1)” or “hardship” variance relief, the Board finds that the Applicant has satisfied its burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, it as the owner of the Property. The Board finds that while the Property has more than double the minimum lot area required in the R-4 (1 acre) zone, the majority of the lot area is encumbered by Township-regulated stream buffers and NJDEP-regulated wetlands, wetland transition areas, and riparian zones, and, given these significant environmental constraints, a conforming development is not possible. The Board finds that the hardship to the Applicant was not “self-created”, by the Applicant or any predecessor-in-title, since the evidence revealed that the Property was subdivided from the larger tract owned by Mr. Croot during the late 1940’s or early 1950’s, and in no event later than 1967, whereas the various state and municipal environmental regulations which render the Property nonconforming as to improvable lot area and building setbacks were not adopted until at least the late 1980’s. The Board also finds that, since the developable/upland portion of the Property, i.e., the proposed dwelling location, essentially is an island surrounded by the stream and the two street frontages, there is no adjoining land that could be acquired by the Applicant in order to create a more conforming improvable lot area or more conforming building setbacks. The Board also takes into consideration the Applicant’s stipulation, as a condition of approval, that the variance relief provided is contingent on the Applicant offering the Property for sale to the owners of adjoining Lot 3, Block 3601, at fair market value assuming all variance approvals, and the adjoining owners refusal or failure to purchase same at such terms.

38. Third, and finally, the Board finds that the Applicant has satisfied the negative criteria. The Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. With respect to the front-yard setback from Rocky Lane, the Board notes that the evidence revealed that the proposed 60 foot front-yard setback was generally equivalent to, and, in fact, slightly greater than, the average front-yard setback along Rocky Lane. With respect to the front-yard setback from South Finley Avenue, the Board recognizes that the proposed 50 foot setback from South Finley Avenue will be increased to 55 feet. Moreover, the Board takes into account the significant existing and proposed additional landscape screening/buffering, which the Board finds will alleviate some of the visual detriment resulting from this setback deficiency. With respect to the side- and rear-yard setback deviations, the Board recognizes that same are as a result of the stream buffer conservation area required by the various environmental constraints on the Property and that the evidence revealed that the distance from the proposed dwelling to the nearest existing dwelling was at least 140 feet. The Board also notes, in this regard, that the evidence revealed that the Property is twice as wide as neighboring lots 2 and 3 and that the total effective side-yard setback would correspond to approximately 75% of the Property's lot frontage, whereas the Master Plan and Zoning Ordinance contemplates only a 50% ratio. With respect to the minimum improvable lot area deficiency, the Board recognizes that, while the proposed dwelling would be the largest home on Rocky Lane, and at least twice the size of several other of the homes thereon, the Property is more than 2 acres in size and even eliminating that portion of the lot area that is located behind neighboring lots 2 and 3, still is significantly larger than most of the other lots on Rocky Lane,

such that the proposed dwelling is roughly comparable in floor area ratio to the dwellings on the other lots on Rocky Lane. Finally, the variance relief afforded herein cannot reasonably be characterized as constituting an arrogation of the zoning authority of the governing body and the Township's Planning Board.

WHEREAS, the Board took action on this application at its meeting on March 7, 2012, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of March, 2012, that the application of the Estate of Eleonore R. Croot, for variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The final details of the Stream Buffer Management Plan shall be subject to review and approval by the Township Engineering Department, and the plan must be implemented or bonded for prior to the issuance of a building permit;
- (3) The Applicant shall grant the Township a wetlands conservation easement for all wetlands/wetland transition areas at the Property, which easement shall reflect that the Applicant and all subsequent property owners shall be obligated to maintain the 4 foot high, 3-rail fence proposed for the protection of the remaining stream buffer area. The easement shall be drafted by the Township Attorney, executed by the Applicant and recorded with the Somerset County Clerk, and the easement boundary must be delineated with Township standard markers, which must be installed or bonded for, all prior to the issuance of a building permit;
- (4) The Applicant shall provide the requisite soil erosion & sediment control measures and stormwater infiltration measures in accordance with Section 21-42.1.f.2 of the Land Development Ordinance. The aforementioned measures must be shown on the plan and the plan must be supported by perc test results, all

subject to further review and approval by the Township Engineering Department, prior to the issuance of a building permit;

- (5) The tree removal, replacement and preservation details/notes shown on the plans shall be subject to the further review and approval of the Township Engineering Department, prior to any land disturbance;
- (6) The subject dwelling shall be limited to 2,464 square feet of living space, as proposed, and conversion of the proposed garage space to living space shall be prohibited;
- (7) The Applicant shall obtain an engineering permit prior to any disturbance within the Rocky Lane right-of-way;
- (8) All utility services shall be located underground;
- (9) The Applicant shall disclose to the purchaser of the new dwelling information regarding the conservation easement, zoning regulations applicable to accessory structures/fences on corner lots, and all of the other conditions of approval imposed by the Board or stipulated to by the Applicant. The form and content of the disclosure shall be subject to review and approval by the Township Engineering Department, prior to the issuance of a building permit;
- (10) The Applicant shall pay the development fee required by Section 21-86 of the Land Development Ordinance;
- (11) The Applicant shall submit a signed and sealed Landscape Plan (Exhibit A-3) prior to the issuance of any building permit;
- (12) The aforementioned variance approval shall be contingent on the Applicant's offering the Property for sale to the owners of adjoining Lot 3, Block 3601, at fair market value, to be calculated as if all variance approvals have been obtained, and the adjoining owners refusing or failing to so acquire the Property at such terms, the evidence of all of which shall be submitted to the Board Attorney and subject to his review and approval, prior to the issuance of any building permits;
- (13) The proposed dwelling shall be substantially similar in character, design and orientation to the dwelling proposed on the applicable plans, including orienting the dwelling toward Rocky Lane, however, the location of the proposed garage shall be adjusted so as to increase the proposed setback from South Finley Avenue from 50 feet to 55 feet;

- (14) The height of the proposed dwelling shall be no greater than 32 feet and the one and one-half story garage portion of same shall be no greater than 22 feet in height;
- (15) The evergreen trees depicted on the Applicant's Landscape Plan (Exhibit A-3) shall be planted at heights of between 8 and 10 feet, and in quantities, and at locations, subject to the discretion of the Township Engineering Department;
- (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 aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations 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 year of the date of this Resolution.

ROLL CALL VOTE:

Those in Favor: Harris, Piedici, Rhatican, Carlucci, Plaza

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 April 4, 2012 as copied from the Minutes of said meeting.

ADJUSTMENT

Dated: _____, 2012

FRANCES FLORIO, Secretary
ZONING BOARD OF

OF THE TOWNSHIP OF
BERNARDS, COUNTY OF
SOMERSET,
STATE OF NEW JERSEY

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**JAMES and MELISSA PRUSKOWSKI
Case No. ZB11-024**

RESOLUTION

WHEREAS, JAMES and MELISSA PRUSKOWSKI (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 replacement/expansion of the existing driveway and front walkway, in connection with an existing dwelling located on property identified as Block 7702, Lot 21 on the Tax Map, more commonly known as 10 Everson Place:

A variance for lot coverage of 16.63%, whereas the existing lot coverage is 14.86% and the maximum permitted lot coverage in an R-4 (1 acre) residential zone is 15%, pursuant to Section 21-15.1(d)(1) and Table 501 of the Land Development Ordinance; and

WHEREAS, a public hearing on notice was held on such application on March 7, 2012, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board reviewed the application and deemed it to be complete.
2. The property is a slightly undersized (0.9 acres versus 1 acre minimum required) lot fronting on Everson Place (the “Property”) which is presently improved with

a two-story, single-family dwelling with associated driveways and walkways, a free standing frame shed, and a wood deck and slate patio to the rear of the existing dwelling.

3. The Applicants propose to replace/expand the existing driveway, including the creation of new 16 by 24 foot parking space, and also replace/expand the existing front walkway, incorporating a new 12 foot by 12 foot entrance area and a new 6 foot by 10 foot sitting area.

4. The Applicants' proposal is depicted on a Plan of Survey, with colorized notations indicating the proposed additional driveway and front walkway areas.

5. The Property is located in the R-4 (1 acre) residential zone. The requested lot coverage variance falls within the criteria of N.J.S.A. 40:55D-70(c).

6. By Memorandum dated January 11, 2012, the Environmental Commission recommended that no additional impervious areas over the allowable limit be created on this site, but that if the Board does approve the application, the Commission would like to see no net increase in volume and rate of flow for water runoff from the site, with this calculation being based on the total amount of impervious surface versus the proposed increase in impervious surface.

7. David Schley, A.I.C.P./P.P., the Board Planner, was duly sworn according to law.

8. James Pruskowski, one of the Applicants, residing at 10 Everson Place, was duly sworn according to law. Mr. Pruskowski explained the need for the proposed expansion of the existing driveway and front walkway, including the reasons why a parking space is necessary. Mr. Pruskowski referred the Board to the aerial photograph of the subject lot and the balance of Everson Place. He explained that Everson Place is a

cul-de-sac street that allows for parking on only one side and is heavily used by existing residents as overflow parking for the Basking Ridge Little League and as a turn-around point for traffic coming off of Mount Airy Road. Mr. Schley, the Board Planner, confirmed that Everson Place is only 24 feet wide and is a curbed street, whereas most of the streets in the Township are between 28 and 30 feet in width.

9. Mr. Pruskowski testified that he took the photographs submitted with the application materials approximately 2 months prior and that they constituted an accurate depiction of the subject lot dwelling as it presently exists.

10. Mr. Pruskowski clarified the coverage area of the existing shed, explaining that while the plan shows it at 8 feet by 16 feet (128 square feet), in actuality it is 8 feet by 12 feet (96 square feet).

11. Mr. Pruskowski testified regarding stormwater runoff/drainage issues. He explained that there currently is no problem with standing water or any other drainage problems. Mr. Pruskowski also testified that there are two roof leaders, one flowing to the sewer system in the front of the home and the other flowing out the back, and that he was not aware of any connection to any drywells.

12. Mr. Pruskowski testified that he discussed the proposal with some of his neighbors and none of them objected to same.

13. Mr. Pruskowski testified that the other lots on Everson Place all were approximately the same 0.92 acres size as his lot and that all of the dwellings thereon were approximately the same size as his dwelling. He testified, and demonstrated by reference to the aerial photographs, that his dwelling is slightly further back from the

street, which would add some additional driveway and, hence, impervious coverage to his Property.

14. Mr. Pruskowski stipulated, as a condition of approval, to comments 3 through 5 in the Board Planner's Memorandum, suggesting stormwater infiltration measures, a conservation easement for the wetlands/transition areas, a zoning permit and, if necessary, an engineering permit for any work proposed within the Township right-of-way along Everson Place. With respect to the stormwater infiltration measures, the Applicants stipulated that same would be sufficient to capture water runoff from the site corresponding to a square footage of impervious coverage to be reasonably determined by the Township Engineering Department, but in no event less than 712 square feet.

15. Mr. Pruskowski opined that the proposed expansion of the front walkway and the driveway would improve the aesthetic appearance of the dwelling and the Property, as well as provide for additional safety in light of the existing traffic/parking problems on Everson Place.

16. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the variance relief under N.J.S.A. 40:55D-70(c)(1) and N.J.S.A. 40:55D-70(c)(2).

17. First, with respect to the "c(1)" or "hardship" positive criteria, the Board finds that the Applicants have satisfied his burden of demonstrating that strict application of the zoning regulations will result in peculiar and exceptional difficulties to, or exceptional and undue hardship upon, them as the owners of the Property. The Applicants' 40,277 sq. ft. lot is slightly undersized for the R-4 zone and, for comparison purposes, if the Applicants had a conforming lot area of 43,560 sq. ft., then the proposed

lot coverage would be 15.38%, thus exceeding the maximum lot coverage by 164 sq. ft (0.38%). Moreover, the evidence revealed that Everson Place is a narrow cul-de-sac street that allows parking on only one side and is heavily used by existing residents as overflow parking for the Basking Ridge Little League and as a turnaround point for traffic coming off of Mount Airy Road. Accordingly, the Board finds that the size and location of the street induce the need for additional on-site parking and driveway area from a safety perspective.

18. Second, with respect to the “c(2)” or “flexible c” positive criteria, 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 proposed development will provide a desirable visual environment, enhance the visual compatibility of the Property with adjoining properties and otherwise promote the general welfare. The Board also finds that the proposal will provide safety benefits as noted above. The Board is of the opinion that the Applicants’ stipulated to conditions, including the agreed-to stormwater infiltration measures, will alleviate potential detriments, including stormwater runoff concerns, associated with the proposed development. The Board further recognizes that there was no public objection to the application, which the Board would expect if there were existing stormwater runoff issues.

19. Third, and finally, in light of the conditions hereinafter set forth, the Board finds that the Applicants have satisfied the negative criteria. Specifically, 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. WHEREAS, the Board took action on this application at its meeting on March 7, 2012, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of March, 2012, that the application of James and Melissa Pruskowski, 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 install stormwater infiltration measures, such as a drywell, such measures to be provided in order to mitigate negative impacts related to the requested variance, in accordance with Section 21-42.1.f.2, with capacity corresponding to at least 712 square feet of impervious coverage, subject to the review and approval by the Township Engineering Department prior to the issuance of any permits;
- (3) The Applicants shall delineate the wetlands/transition areas in the Applicants' rear-yard within a conservation easement granted to the Township, which easement shall be prepared by the Township Attorney, executed by the Applicants, and recorded with the Somerset County Clerk, prior to the issuance of any permits. The easement boundary must be delineated with Township standard markers, which must be installed, or bonded for, prior to the issuance of any permits;
- (4) The Applicants shall obtain a zoning permit prior to any land disturbance;
- (5) The Applicants shall obtain an engineering permit for any work proposed within the Township right-of-way along Everson Place;
- (6) 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;

- (7) The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State; and
- (8) 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: Harris, Rhatican, Vogt, Carlucci, Plaza

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Bernards at its meeting of April 4, 2012 as copied from the Minutes of said meeting.

FRANCES FLORIO, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF BERNARDS,
COUNTY OF SOMERSET,
STATE OF NEW JERSEY

Dated: _____, 2012

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF BERNARDS**

**EDMUND J. and HONG Z. McCORMICK
Case No. ZB12-001**

RESOLUTION

WHEREAS, EDMUND J. and HONG Z. McCORMICK (the “Applicants”) have applied to the Zoning Board of Adjustment of the Township of Bernards (the “Board”) for the following bulk variance in connection with an approximately 690 square foot, second floor master bedroom/bathroom addition on top of the existing first floor at the west end of the dwelling located on property identified as Block 7201, Lot 29 on the Tax Map, more commonly known as 93 Mine Brook Road:

A variance for a proposed rear-yard setback of 30.1 feet, whereas the existing rear-yard setback is 30.1 feet, and whereas 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; and

WHEREAS, a public hearing on notice was held on such application on March 7, 2012, at which time interested citizens were afforded an opportunity to appear and be heard; and

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

1. The Board reviewed the application and deemed it to be complete.
2. The subject property is a flag shaped lot of approximately 4 acres fronting on Mine Brook Road, with stream buffer conservation easement and water and sewer

easements running through virtually the entirety of the “flag staff” shaped, front half of the lot (the “Property”).

3. The Property is presently improved with a three bedroom, single-family dwelling with an attached 3-car garage, a 1-car detached workshop-garage and a garden shed, all of which structures are located in the “flag” shaped, rear half of the Property.

4. The Applicants propose to construct an approximately 23 foot by 30 foot (approximately 690 square foot), second floor master bedroom/bathroom addition on top of the existing first floor at the west end of the dwelling.

5. The Applicants submitted architectural plans and elevations prepared by Nicholas J. Ferrara, A.I.A., P.P., dated April 22, and May 31, 2009, same consisting of four (4) sheets. The Applicants also submitted a Survey prepared by Mark J. Cirone, P.L.S., of Lakeland Surveying, dated July 15, 2008 and last revised October 7, 2008, same consisting of one (1) sheet.

6. The Property is located in the R-4 (1 acre) residential zone. The requested variance for the rear-yard setback falls within the criteria of N.J.S.A. 40:55D-70(c).

7. The Township Environmental Commission, by Memorandum dated February 17, 2012, advised that it had no environmental concerns at the time.

8. David Schley, A.I.C.P./P.P., the Board Planner, was duly sworn according to law.

9. Edmund J. McCormick, one of the Applicants, residing at 93 Mine Brook Road, was duly sworn according to law. Mr. McCormick testified that he and his wife purchased the subject dwelling approximately 3 ½ years ago when it was a dilapidated contemporary and they have invested a significant amount of money to substantially

upgrade the home which is now a colonial-style dwelling. He further testified that the dwelling has 3 bedrooms and that his Property is surrounded by approximately 13 homes all of which have between 5 and 6 bedrooms. Mr. McCormick explained that the rear-yard setback deviation is a pre-existing nonconformity and that no further encroachment is proposed since the addition would be a vertical extension of the existing dwelling.

10. Mr. McCormick testified that he discussed the proposal with his neighbors and none of them had any objection thereto. He testified that he took all of the photographs submitted with the application materials on or about January 18, 2012 and that same constituted an accurate depiction of both the Property and the subject dwelling as it presently exists. Mr. McCormick further testified that the encroachment of portions of their driveway upon the adjoining vacant property to the north/west constituted a pre-existing condition.

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

12. After reviewing the evidence submitted, the Board, by a vote of 5 to 0, finds that the Applicants have satisfied their burden of proving an entitlement to the requested variance relief under both N.J.S.A. 40:55d-70(c)(1) and N.J.S.A. 40:55d-70(c)(2).

13. With respect to the positive criteria under the “(c)(1)” or “hardship” analysis, 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, due to an extraordinary and exceptional situation uniquely affecting the Property. The Property has an unusual shape (flag lot) and significant environmental

constraints (stream buffer conservation easements). Moreover, due to the orientation of the existing dwelling, whereby the rear of the dwelling faces the north side property line, a 75-foot rear-yard (instead of a 20-foot side-yard) is required to the north side. The evidence revealed that the proposed addition will vertically extend the existing dwelling within the existing footprint, maintaining the pre-existing nonconforming 30.1 foot setback with no further encroachment than presently exists. The Board notes that the roof peak of the proposed addition is a couple feet lower than the peak of the existing roof. The Board finds that the Applicants' hardship was not "self-created," by the Applicants or any predecessor-in-title.

14. With respect to the positive criteria for a "c(2)" or "flexible c" variance, 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 proposed development will provide a desirable visual environment, enhance the visual compatibility of the property with adjoining properties and otherwise promote the general welfare. The evidence revealed that the Property is one of the largest building sites in the neighborhood and that subject dwelling thereon appears to have the least number of bedrooms of any dwelling within the neighborhood. The Board finds that the proposed addition of a fourth bedroom would bring the subject property into even more conformity with the character of the neighborhood.

15. The Board finds that any detriment from the zoning deviation would be modest relative to the benefits to be derived from the proposed development. The

proposed second floor addition maintains the same 30.1 foot setback from the north side property line as the existing two-story dwelling. The evidence revealed that there exists adequate landscape buffering to screen from the view of the neighboring property owners any incremental visual detriment from the proposed second floor addition.

16. Finally, the Board finds that the Applicants have satisfied the negative criteria. 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.

WHEREAS, the Board took action on this application at its meeting on March 7, 2012, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Bernards, on the 7th day of March, 2012, that the application of Hong and Edmund McCormick 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 revise the architectural plans so as to correct the labeling of the front/rear and the right/left building elevations, prior to the issuance of a building permit;
- (3) The Applicants shall amend the Survey to show the existing sanitary sewer easement located along the front/north side property line, and to change the word "proposed" before the term "stream buffer easement" to the word "existing", prior to the issuance of a building permit;
- (4) 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;

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

ROLL CALL VOTE:

Those in Favor: Harris, Rhatican, Vogt, Carlucci, Plaza

Those Opposed: none

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of Bernards at its meeting on April 4, 2012 as copied from the Minutes of said meeting.

ADJUSTMENT

Dated: _____, 2012

FRANCES FLORIO, Secretary
ZONING BOARD OF

OF THE TOWNSHIP OF
BERNARDS, COUNTY OF
SOMERSET,
STATE OF NEW JERSEY