

RECEIVED

Application No. 10-21 MAY 06 2021 Application Fee _____
Date of Filing 5/6/21 Escrow _____

PLANNING / ZONING / ENGINEERING

TWP. OF BERKELEY HCTS. NJ
APPLICATION TO ZONING BOARD OF ADJUSTMENT, Berkeley Heights, NJ

NOTE: It is the responsibility of the applicant to specify in this application all requests for relief from any section of the ordinance that may be needed. Should any unspecified violation be found prior to or during the course of a public hearing, no such relief can be granted and the case cannot be permitted to proceed without re-advertising the notices. If the failure is not discovered by the Board until it commences its deliberation after closing the public hearing, the result may be a denial of the entire application, or the grant or recommendation that the variance be granted limited to the specific relief requested, which will result in the necessity for a re-application to obtain the remaining relief required.

In the matter of the petition of Marci Ryvicker for relief from the strict application of
(applicant name)
the provisions of the Zoning Ordinance of the Township of Berkeley Heights.

Petitioner Name Marci Ryvicker, residing at 20 Old Farm Road
c/o Dempsey, Dempsey & Sheehan
Telephone No. & Sheehan: 908-277-0388, Email address salfonso@ddsrlaw.com

1. Petitioner is owner of property at 20 Old Farm Road, Block 28.01, Lot 64.02
(owner or tenant etc.) Owner:
Marci L. Ryvicker, Trustee of the Marci Ryvicker
Revocable Trust dated September 24, 2018

2. The Petitioner is requesting to use the property in the following manner with the following variances required:
Petitioner proposes to improve the existing single family home with the construction and installation of a pool and associated outdoor improvements in the rear yard of the property which increases the total lot coverage to 25.69% where 25% is permitted, and the other coverage to 12.56%, where 10% is permitted.

3. Does the Application concern a request for Certificate of Nonconformity? No N/A
N/A Does the Application concern a Use Variance? No, and: a) Site Plan No b) Subdivision Prior Subdivision No
See attached Resolutions.

NOTE: If Application concerns site plan or subdivision, appropriate plans and additional forms must be filed with the Zoning Board of Adjustment as an additional part of the Application.

4. The proposed building/subdivision/use is contrary to Article 6.1 Section 1(B) of the Zoning Ordinance.

5. a. Description of the Property:

	Required See Attached Schedule 6.1.1B	Existing	Proposed	Variance Required: Y/N
Lot Area (sq. ft.)	20,000 s.f.	17,424 s.f.	17,424 s.f.	Existing nonconforming
Lot Width	100'	124'	124'	N
Lot Depth	150'	142'	142'	nonconforming
Front Setback	50'	35'	35'	"
Side Setback	12	19'	19'	N
Side Setback	18'	42'	42'	N
Combined side setbacks	30'	61'	61'	N
Rear Setback:	40'	43'	43'	N.

- b. Please provide numbers below. Please do not include slotted deck in this section:
- 1-Area of existing buildings/structures (house, attached/detached garage, covered porch, shed) to remain 2287 sq. ft. ✓
 - 2-Area of proposed buildings/structures (house, attached/detached garage, covered porch, shed) 0 sq. ft. ✓
 - 3- Total area to be occupied by buildings/structures 2287 sq. ft. ✓
 - 4-Area of existing Other Items (patio, driveways, walks, pool) 1203 sq. ft. ✓
 - 5-Area of proposed Other Items (patio, driveway, walks, pool) 986 sq. ft. ✓
 - 6-Total area to be occupied by Other Items 2189 sq. ft. ✓
 - 7-TOTAL AREA OF EXISTING BUILDINGS/STRUCTURES AND OTHER ITEMS 3490 sq. ft. ✓
 - 8-TOTAL AREA OF EXISTING & PROPOSED BUILDINGS/STRUCTURES & OTHER ITEMS 4,476 sq. ft. ✓

c. Accessory structures (if applicable); Pool and surrounding decking (including pool accessories)
(type: slotted deck, pool, etc.)

Area proposed 2457 square feet

Proposed Set Backs

Maximum height proposed _____ feet

Side 13.7' Side 54' Rear 15'

*pool at grade
waterfall?*

d. Impervious Lot Coverage (from 5.b., Page 1)

Existing buildings/structures (Item 1/sq. ft. of lot) 13.13 percent

	Maximum Allowed	R-15/20 Zone	R-10 Zone
Existing buildings/structures (Item 1/sq. ft. of lot)	<u>13.13</u> percent	15%	20%
Existing Other items (Item 4/sq. ft. of lot)	<u>6.90</u> percent	10%	10%
Total existing lot coverage (Item 1 + Item 4/sq. ft. of lot)	<u>20.03</u> percent	25%	30%
Proposed buildings/structures (Items 1 + 2/sq. ft. of lot)	<u>13.13</u> percent	15%	20%
Proposed Other items (Items 4 + 5/sq. ft. of lot)	<u>12.56</u> percent	10%	10%
Total proposed lot coverage (Items 1+2+4+5/sq. ft. of lot)	<u>25.69</u> percent	25%	30%

Existing Other items (Item 4/sq. ft. of lot) 6.90 percent

Total existing lot coverage (Item 1 + Item 4/sq. ft. of lot) 20.03 percent

Proposed buildings/structures (Items 1 + 2/sq. ft. of lot) 13.13 percent

Proposed Other items (Items 4 + 5/sq. ft. of lot) 12.56 percent

Total proposed lot coverage (Items 1+2+4+5/sq. ft. of lot) 25.69 percent

6. Has there been a previous petition for relief involving the property? Yes (If yes, attach Resolution.)

7. Facts in support of petitioner's relief:

Please see attached Memorandum in Support of Application.

8. Set forth the particular Statute under which this Application is made (N.J.S.A. 40:55D-70)

a) Appeal _____ b) Interpretation _____ c) Hardship d) Use _____

9. Has the Building or Zoning Department examined the plans for the proposed building and refused a building permit? Yes If Yes, please attach the Zoning Officer's Denial letter.

10. If the property is not owner occupied, name the Lessee and Use of the existing building and premises
N/A

If the property is not to be owner occupied, name the Lessee and the proposed Use of the building and premises.
N/A

11. Attach hereto and made a part hereof are the following:

- Complete set of plans of any proposed building alteration or extension, including all items set forth in instructions
- 200-foot radius map and copy of certified list (provided by the Township) of property owners within 200 feet
- Architectural plans or equivalent

I hereby certify that the above statements made by me and the statements contained in the papers submitted herewith are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dempsey, Dempsey & Sheehan
Attorneys for Applicant

Samantha T. Alfonso

Petitioner Signature By: Samantha T. Alfonso, Esq.

Dempsey, Dempsey & Sheehan

Address

387 Springfield Avenue, Summit, New Jersey 07901

908-277-0388

862-812-2169

Phone

Cell Phone

salfonso@ddsni.com

E-Mail Address



Berkeley Heights Township
 ZONING
 29 PARK AVE
 BERKELEY HEIGHTS, NJ 07922
 908-464-2700, 2115
 TBOCKO@BHTWP.COM

Application Date: 5/6/2021
 Application Number: ZA-21-366
 Permit Number: _____
 Project Number: _____
 Fee: \$0

Denial of Application

Date: 6/11/2021

To: SAMANTHA ALFONSO, ESQ.
 387 SPRINGFIELD AVE.
 SUMMIT, NJ 07901

CC: APP TELE:(908) 277-0388
 APP EMAIL:SALFONSO@DDSNJLAW.COM

RE: 20 OLD FARM ROAD
 BLOCK: 2801 LOT: 64.02 QUAL: ZONE: R-20

DEAR SAMANTHA ALFONSO, ESQ. ,

REVISED POOL PLAN SUBMITTED -

The applicant is proposing to install an in-ground pool, waterfall feature, spa, pool decking, retaining wall to be located in the rear yard area with configuration, size & location as shown on plan prepared by MJM Surveying & Engineering, LLC dated September 16, 2020, entitled: POOL AND SOIL EROSION & SEDIMENT CONTROL PLAN, last revised April 24, 2021. Initial zoning denial issued on 11/19/2020 through ZA-21-1.

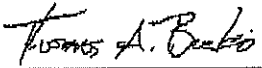
Section 6.1.1B "Schedule of General Regulations" of the Municipal Land Use Procedures Ordinance allows for a maximum 10% other coverage, where 6.90% is existing and 12.56% is proposed. Total lot coverage allowed is 25% of the lot area, where 20.03% is existing and 25.69% is proposed.

Note: The applicant proposes a wood deck structure, at grade, surrounding the pool water area as shown on the plan, which comprises an area of 1,188 sq. ft. Slotted uncovered decks do not count as coverage, however are subject to setbacks. This area has not been added to "other" coverage and is not included in the percentages listed above. A note on the plan reads: POOL DECKING DETAIL - 2" x 4" frame laid on compacted 7" thick stone bed (1 1/2 clean stone). Adding the compacted stone base to "other" coverage would increase "other" coverage to 19.38% and total coverage to 32.51%.

Existing nonconforming: Planning Bd. subdivision application Resolutions M-1-15 & M-2-16 addressed nonconforming bulk variances issued as part of a two lot subdivision.

You have a right to appeal this determination to the Berkeley Heights Zoning Board of Adjustment. Please call Connie Valenti at 908-464-2700, ext., 2124.

Sincerely,


 Thomas A. Bocko - Zoning Officer



Berkeley Heights Township
 ZONING
 29 PARK AVE
 BERKELEY HEIGHTS, NJ 07922
 908-464-2700, 2115
 TBOCKO@BHTWP.COM

Application Date: 11/19/2020
 Application Number: ZA-21-1
 Permit Number: _____
 Project Number: _____
 Fee: \$0

Denial of Application

See Revised Denial

Date: 1/4/2021

To: MARCI RYVICKER REVOCABLETRUST
 20 OLD FARM ROAD
 BERKELEY HEIGHTS, NJ 07922

CC: Sage Landscaping
 Anthony Sylvan Pools

RE: 20 OLD FARM ROAD
 BLOCK: 2801 LOT: 64.02 QUAL: ZONE: R-20

DEAR MARCI RYVICKER REVOCABLETRUST,

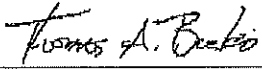
The applicant is proposing to install an in-ground pool, waterfall feature, spa, pool decking, retaining wall to be located in the rear yard area with configuration, size & location as shown on plan prepared by MJM Surveying & Engineering, LLC dated September 16, 2020, entitled: POOL AND SOIL EROSION & SEDIMENT CONTROL PLAN.

Section 6.1.1B "Schedule of General Regulations" of the Municipal Land Use Procedures Ordinance allows for a maximum 10% other coverage, where 7.20% is existing and 13.10% is proposed. Total lot coverage allowed is 25% of the lot area, where 20.32% is existing and 26.22% is proposed. The above percentages include a proposed retaining wall, 130LF x 2' wide or 260 sq. ft. additional not included in the pool plan "Impervious lot coverage summary" chart.

Existing nonconforming: Planning Bd. subdivision application Resolutions M-1-15 & M-2-16 addressed nonconforming bulk variances issued as part of a two lot subdivision.

You have a right to appeal this determination to the Berkeley Heights Zoning Board of Adjustment. Please call Connie Valenti at 908-464-2700, ext., 2124.

Sincerely,


 Thomas A. Bocko - Zoning Officer

Application for Development
Marci Ryvicker
20 Old Farm Road
Block 28.01, Lot 64.02
Berkeley Heights, NJ 07922

Memorandum in Support of Application for Development

The applicant Marci Ryvicker requests permission of the Board of Adjustment of the Township of Berkeley Heights to improve the property located at 20 Old Farm Road with the construction and installation of an aesthetically pleasing, outdoor leisure area and pool, with appropriate landscaping to be located in the rear yard.

Toward this end, the following relief is requested:

- Variance relief from the strict application of the Land Use Regulations Ordinance regulating lot coverage, pursuant to N.J.S.A.40:55-70(c)(1) and/or (c)(2), to permit a lot coverage of 25.69% where 25% is allowed;
- Variance relief from the strict application of the Land Use Regulations Ordinance regulating lot coverage, pursuant to N.J.S.A.40:55-70(c)(1) and/or (c)(2), to permit other coverage of 12.56% where 10% is allowed; and
- Such other exceptions, requests for interpretation or appeals, waivers, or variances necessary to realize the improvements set forth in the application.

Background

The existing property and single-family home are the product of a Minor Subdivision, approved by the Planning Board of the Township of Berkeley Heights on December 9, 2015, by Resolution adopted on January 6, 2016 (Application No.: M-1-15), and by an Amendment to the Subdivision Approval granted on May 18, 2016, by Resolution adopted on June 15, 2016 (Application No.: M-2-16).

The above-described approvals permitted the subdivision of property designated as Block 2801, Lot 64, into two lots to allow the construction of a single-family home on each lot, with variances and waivers, including a variance for the rear yard setback for the newly created Lot 64.02, commonly known as 20 Old Farm Road.

The amended approval permitted the home to be relocated approximately 15 feet closer to the street, bringing the front yard setback of the home to 35.5 feet from Old Farm Road, where 50 feet is required, to allow for the elimination of the previously granted rear yard variance. The Board approved the application for Amended Subdivision approval, with the variance for a front yard setback of 35.5 feet, where 50 feet was required.

Once the home was built and purchased by the applicant, Ms. Ryvicker, the applicant took a look at the property and open rear yard, and, around January 2021, filed a Zoning Permit application with the Zoning Officer of the Township of Berkeley Heights, proposing a pool and significant outdoor improvements, including a fire pit and pizza oven, with a combined lot coverage of 26.22%, where 25% is permitted, and other coverage of 13.10%, where 10% is permitted.

Following the receipt of the Zoning Review of the Township of Berkeley Heights Zoning Officer, the applicant revised her plans, to reduce the coverages, while maintaining the functionality of the proposed outdoor improvements.

Proposal

The revised proposal, which is a reduction from the original plan, calls for the improvement of the existing single-family home with an aesthetically pleasing, average-sized pool for the neighborhood, and permeable decking surrounding the pool to create a functional, and creative outdoor leisure space.

In addition to using permeable decking, eliminating the decking from the issue of lot coverage, the applicant scrutinized the original plan and asked her experts to revise the proposal from the original plan submitted to the Zoning Officer, reducing the coverage and footprint by eliminating significant

improvements, including, but not limited to, the pizza oven and fire pit, as well as, reducing the size of the pool itself; bringing the total lot coverage from the originally proposed 26.22% to 25.69% and total other coverage from the originally proposed 13.10% to 12.56%.

The property is an oddly-shaped, undersized lot, with only 17,424 s.f., where 20,000 s.f. is the minimum lot size permitted in the zone, which slopes approximately 13 feet from the northwest rear of the existing home towards the northwest property line, requiring the installation of retaining walls for stormwater management and stabilization.

The proposed pool and spa are a total of 785 s.f., on the smaller-end of custom, standard pools in the area and the immediate neighborhood. The surrounding decking proposed will be composite planks, permitting permeability, which is understood to be a stormwater management and environmentally conscious material for such projects.

The, lawfully existing, permitted single family home, the odd-shape of the property, and the undersized dimensions of the lot, presents an extraordinary and exceptional situation that imposes a practical difficulty and undue hardship upon the applicant in seeking to develop her property as a single-family home, and particularly, improving the exterior of the property with permitted, customary and incidental uses associated with single-family residences, such as the proposed pool and associated decking and landscaping. See Lang v. Zoning Board of Adjustment, 160 N.J. 41 (1999); Wilson v. Brick Twp. Zoning Bd., 405 N.J. Super. 189 (App. Div. 2009); and See Bressman v. Gash, 131 N.J. 517 (1993).

The improvements proposed by this application advance the purposes of zoning in that the proposal creates an enhancement to an established, permitted use; the advancement of the general welfare N.J.S.A. 40:55D-2a; the provision of "sufficient space in appropriate locations for a variety of ... residential ... uses ... in order to meet the needs of all New Jersey citizens." N.J.S.A. 40:55D-2g; the promotion of a desirable visual environment N.J.S.A. 40:55D-2i; and to provide adequate light, air and open space N.J.S.A. 40:55D-2c. The proposal therefore advances the intent of the zoning ordinance and master plan.

The benefits to be gained by the proposal, in providing the applicant and her family with an aesthetically pleasing, functional and modern outdoor leisure area, with an average-sized pool, permeable decking, and associated landscaping and stormwater improvements, including retaining walls, substantially outweigh any detriment.

Negative Criteria

The proposal will neither cause a substantial detriment to the public good nor a substantial impairment of the intent and purpose of the zone plan and zoning ordinance:

- The existing single-family home and the proposed improvements to the exterior of the home are permitted uses in the Zone District;
- The proposal will be aesthetically pleasing;
- Stormwater drainage will be appropriately managed;
- The site is more than capable of accommodating the proposal; and
- Property values will be unaffected.

As a result, based on the foregoing, it is requested that the within application for development be approved.

DEMPSEY, DEMPSEY & SHEEHAN
Attorneys for Applicant

By: Samantha T. Alfonso
Samantha T. Alfonso, Esq.

**PLANNING BOARD
TOWNSHIP OF BERKELEY HEIGHTS**

Application No.: M-1-15

RESOLUTION APPROVING APPLICATION

WHEREAS, pursuant to the applicable provisions of the "Municipal Land Use Procedures Ordinance of the Township of Berkeley Heights", an Application was submitted to the Township of Berkeley Heights Planning Board ("Board"), by Jonell Associates Development Company ("Applicant"), for minor subdivision approval with variances and waivers to demolish an existing residence and detached garage on Lot 64 and to subdivide Lot 64 into two new lots to be known as Lot 64.01 and Lot 64.02 and construct a new residential home on each newly formed lot on the property located at 20 Old Farm Road and identified on the Township of Berkeley Heights Tax Map as Block 2801, Lot 64 ("Property"); and

WHEREAS, the Application reviewed by the Board consisted of the following:

<u>Description of Plans/Reports</u>	<u>Date of Plans/Reports</u>
Application for Minor Subdivision	September 8, 2015
Township of Berkeley Heights Planning Board Checklist	September 8, 2015
Minor Subdivision Plans for Lot 64, Block 2801, 20 Old Farm Road, Township of Berkeley Heights, Union County, New Jersey, prepared by William G. Hollows, P.E., P.P., of Murphy & Hollows Associates, LLC, consisting of four (4) sheets	July 29, 2015
Architectural Plans for proposed Lot 64.01 prepared by Jerry Miceli, R.A., of Nova Architecture, Inc., consisting of two (2) sheets	June 16, 2014 revised July 17, 2014
Architectural Plans for proposed Lot 64.02 prepared by Jerry Miceli, R.A., of Nova Architecture, Inc., consisting of three (3) sheets	March 5, 1997

Zoning Review prepared by Thomas A. Bocko, Berkeley Heights Zoning Officer	September 14, 2015
Memorandum from the Berkeley Heights Environmental Commission	September 18, 2015
Memorandum from Thomas McAndrew, Superintendent of the Township of Berkeley Heights, WWTP	September 23, 2015
Review letter prepared by Kamal Saleh, PP, AICP, from the County of Union	September 25, 2015
Report from Board Engineer, Thomas R. Solfaro, P.E., of Neglia Engineering Associates	October 1, 2015

WHEREAS, the following variances and/or waivers were sought by the Applicant in connection with this Application:

- Section 6.1.1B – Lot Area. Minimum permitted 20,000 sf / proposed 17,424 sf (Lot 64.02)
- Section 6.1.1B & 3.1.2H – Corner Lot Area. Minimum permitted 22,000 sf / proposed 18,792 sf (Lot 64.01)
- Section 6.1.1B – Lot Depth. Minimum permitted 150 ft / proposed 140 ft (Lot 64.02).
- Section 6.1.1B – Front Yard Setback. Minimum permitted 50 ft / proposed 30.1 ft (Lot 64.01).
- Section 6.1.1B – Rear Yard Setback. Minimum permitted 40 ft / proposed 26 ft (Lot 64.02)
- Partial Checklist Waiver – Existing elevations and contours (2' contour internal and extended 50' beyond track).
- Partial Checklist Waiver – Proposed elevations and contours (2' contour internal and extended 50' beyond track).

WHEREAS, the Application was noticed and scheduled for public hearing before the Board on October 7, 2015, but was adjourned because the Board lacked a quorum to proceed and all in attendance were advised the Application would be heard at the next regularly scheduled meeting of the Board on October 21, 2015; and

WHEREAS, public hearings were held on the Application by the Board on October 21, 2015 and December 9, 2015 with the November 4, 2015 meeting being adjourned at the request of the Applicant with notice to all those in attendance that the Application would be heard at the next regularly scheduled meeting of the Board on December 9, 2015; and

WHEREAS, the Applicant properly published a newspaper notice of the October 7, 2015 initial hearing date, and the Applicant did duly notify property owners within 200 feet of the Property of the scheduling of such hearing pursuant to N.J.S.A 40:55D-12; and

WHEREAS, during the course of the public hearing, the following exhibits were marked into evidence and considered by the Board:

<u>Description</u>	<u>Exhibit</u>
Minor Subdivision Plans prepared by Murphy & Hollows Associates, Sheet 3 of 4 depicting proposed subdivision and dwellings	A1
Tax Map depicting surrounding area and lots	A2
Aerial photograph of Property and surrounding area	A3
Minor Subdivision Plans of Murphy & Hollows Associates, Sheet 1 of 4 depicting subject lot and surrounding lots	A4
Minor Subdivision Plans prepared by Murphy & Hollow Associates, Sheet 2 of 4 depicting subject lot and conditions	A5
Minor Subdivision Plans prepared by Murphy & Hollow Associates, Sheet 3 of 4 depicting proposed subdivision and dwellings	A6
Minor Subdivision Plans prepared by Murphy & Hollow Associates, Sheet 4 of 4 depicting details of dry wells	A7

Aerial photograph depicting Old Farm Road front setbacks to center line	A8
GeoWeb depicting proposed homes on lots	A9
Tax Map depicting surrounding lots and square footage of lots	A10
GeoWeb depicting surrounding properties and list of properties	A11

WHEREAS, after reviewing the submissions and evidence presented by the Applicant and the reports submitted by the Township's professional staff, the Board hereby makes the following findings:

FINDINGS

1. The Applicant was represented by Paul Weeks, Esq. Mr. Weeks stated that the Applicant is the contract purchaser of the Property. The Applicant is proposing to demolish the existing residence on the Property and subdivide the Property into two lots wherein a new residence will be constructed on each of the newly formed lots.
2. Nick Ciraco was the first witness to testify on behalf of the Applicant. Mr. Ciraco was duly sworn. Mr. Ciraco is the owner of the Applicant, Jonell Associates Development Company. The Applicant is the contract purchaser of the Property. The Purchase Contract is contingent upon the Applicant receiving subdivision approval.

Mr. Ciraco referenced Exhibits A1, A2 and A3 during his testimony. Mr. Ciraco indicated if the Application is approved, the existing structures on the Property will be demolished and the Property would be subdivided into two lots with a new residence being constructed on each lot. Mr. Ciraco discussed the variances that were required. The proposed lots would be smaller than required, but would be consistent with the neighborhood. There are a number of lots in the neighborhood that are smaller than required. There is a mixture of new and old homes in the area. The size of the proposed homes would be similar to other new homes constructed in the area. The proposed homes will face Old Farm Road and have driveway entrances to Old Farm Road.

The Board expressed concern about the location of the proposed residences and their proximity to existing residences on surrounding lots. There were discussions between Mr. Ciraco and the Board members regarding moving the location of the proposed residences to increase the distance from existing residences on surrounding lots. The Board suggested the Applicant provide

greater detail demonstrating the proximity and distances between the proposed and existing residences.

3. Aidan Murphy, P.E., P.P., of Murphy & Hollows Associates, LLC, was the next witness to testify on behalf of the Applicant. Mr. Murphy was duly sworn and his credentials as a Licensed Professional Engineer and Planner in the State of New Jersey were accepted by the Board. Mr. Murphy referred to Exhibits A4, A5, A6 and A7 during his testimony. Mr. Murphy testified as to the variances associated with the Application. There was discussion whether Kingman Road was a private or public road and the implications of such determination on the variances required. There was substantial discussion between Mr. Murphy and the Board regarding the location and proximity of the proposed residences to existing residences on surrounding lots. The Board requested the Applicant provide additional analysis and information on this issue.
4. Mr. Murphy's testimony continued with this discussion of the location of the proposed drywells on the Property. Mr. Murphy indicated the development will not increase the flow of water onto surrounding properties. Mr. Murphy also testified 26 trees will be removed from the Property and replaced in accordance with Township Ordinance requirements. The height of the proposed residences would not require a variance.
5. The hearing was open to the public for the questioning Mr. Ciraco and Mr. Murphy. The members of the public had no questions for these witnesses. Further hearing on the Application was adjourned to the next scheduled meeting date of the Board on November 4, 2015. All in attendance were advised of the next scheduled hearing.
6. On November 4, 2015, the Applicant appeared before the Board. The Applicant indicated a private easement issue needed to be resolved prior to proceeding. The Applicant indicated an existing access easement on the Property needed to be vacated and this open issue required resolution prior to proceeding. The Application was adjourned to the next regularly scheduled meeting date of December 9, 2015. All in attendance were advised of the next scheduled hearing date.
7. The Application continued on December 9, 2015. Mr. Weeks indicated the private easement issue had been resolved. The access easement was not on the Applicant's property as originally believed. The access easement was actually on an adjacent property.
8. The Application continued with the testimony of Mr. Murphy. Mr. Murphy, still under oath, testified as to the size of the lots in the area and the location of the proposed residences to existing residences on surrounding lots. Mr. Murphy testified the subdivision will create lots which are similar to existing lots in the neighborhood. Mr. Murphy referred to Exhibits A8, A9, A10 and A11 during his

testimony. Mr. Murphy discussed the positive and negative criteria of the Municipal Land Use Law. The proposed Application will create lots similar and in conformance with the existing neighborhood. The existing structures on the Property will be demolished and new residences will be constructed on each lot similar to other newly constructed residences in the neighborhood. The amount of impervious coverage will be decreased. The Applicant agreed to plant seven white pine trees, 7 to 8 feet tall. The Applicant agreed to work with Neglia Engineering's Landscape Architect and comply with recommendations pertaining to landscaping.

9. The hearing was open to the public for the questioning of Mr. Murphy. The members of the public had no questions for Mr. Murphy.
10. The Applicant offered no further witnesses. The hearing was open to the public for comments. There were no members of the public with questions or comments pertaining to the Application and the hearing was concluded.

During the hearing, the Applicant agreed to comply with the following:

- The Applicant agreed to comply with the requirements and recommendations set forth in the September 14, 2015 Zoning Review of the Township of Berkeley Heights Zoning Officer, Thomas Bocko.
- The Applicant agreed to comply with the requirements and recommendations set forth in the September 18, 2015, Memorandum from the Berkeley Heights Environmental Commission.
- The Applicant agreed to comply with the requirements and recommendations set forth in the September 23, 2015 Memorandum from Thomas McAndrew, Superintendent of the Township of Berkeley Heights WWTP.
- The Applicant agreed to comply with the requirements and recommendations set forth in the October 1, 2015 Neglia Engineering Report.
- The Applicant agreed to plant 7 white pine trees, 7 to 8 feet tall.
- The Applicant agreed to comply with the recommendations of the Neglia Engineering Landscape Architect pertaining to landscaping at the Property.

WHEREAS, the Board took action on the Application at the December 9, 2015 meeting and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW THEREFORE, the Township of Berkeley Heights Planning Board, after carefully considering all of the evidence, makes the following conclusions:

1. The Board finds and concludes that the Applicant has sustained its burden of proof as to the proposed variances and waivers, and the purposes of the Municipal Land Use

Law will be advanced by the requested deviations from the zoning requirements and the benefits derived therefrom will substantially outweigh any detriments associated therewith. The subdivision will create two (2) lots similar and in conformance with the existing neighborhood. The proposed residences will be similar to other newly constructed residences in the area. The Board finds and concludes the detriments, if any, associated with the Application are minimal and substantially outweighed by the benefits of removing the existing residence on the Property and constructing a new residence on each of the newly formed lots.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Berkeley Heights on this 6th day of January, 2016, confirming the action taken by the Board on December 9, 2015, that the Application of Jonell Associates Development Company for minor subdivision approval with variances and waivers to demolish the existing residence and detached garage on Lot 64 and to subdivide Lot 64 into two lots to be known as Lot 64.01 and Lot 64.02 and construct a new residence on each newly formed lot on the Property is hereby granted based upon the submissions, testimony and evidence provided by the Applicant subject to the following conditions:

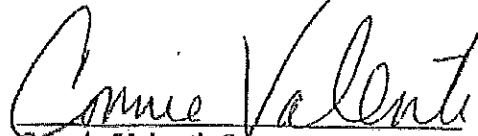
1. The Applicant shall comply with the requirements and recommendations set forth in the September 14, 2015 Zoning Review of the Township of Berkeley Heights Zoning Officer, Thomas Bocko.
2. The Applicant shall comply with the requirements and recommendations set forth in the September 18, 2015, Memorandum from the Berkeley Heights Environmental Commission.
3. The Applicant shall comply with the requirements and recommendations set forth in the September 23, 2015, Memorandum from Thomas McAndrew, Superintendent of the Township of Berkeley Heights WWTP.
4. The Applicant shall comply with the requirements and recommendations set forth in the October 1, 2015, Neglia Engineering Report.
5. The Applicant shall plant seven white pine trees, 7 to 8 feet tall.
6. The Applicant shall comply with the recommendations of the Neglia Engineering Landscape Architect pertaining to landscaping at the Property.
7. The Applicant shall submit revised plans addressing all conditions of the Board as may be necessary and required.

8. The Applicant shall obtain any and all approvals required by outside agencies, including, but not limited to, NJDOT, NJDEP, Union County, Somerset-Union Soil Conservation District, Township of Berkeley Heights, Township of Berkeley Heights Police Department, Township of Berkeley Heights Fire Department, Township of Berkeley Heights Emergency Management, and Township of Berkeley Heights Department of Public Works.
9. The Applicant shall pay all required Affordable Housing Development fees prior to the issuance of any certificate of occupancy.
10. The Applicant shall post performance guarantees, escrows and inspection fees with the Township of Berkeley Heights in amounts established by the Township Engineer. The performance guarantees are to be in a form satisfactory to the Township Attorney. This condition shall be satisfied prior to the commencement of any construction or site disturbance.
11. The Applicant shall periodically post sufficient funds with the Township to satisfy any deficiency in the developer escrow account.
12. The Applicant shall pay all taxes, fees and required escrow deposits that may be due and owing prior to the issuance of any building permits.
13. All as built plans and drawings shall be submitted to the Township prior to the release of any bonds posted by the Developer as may be required.

BE IT FURTHER RESOLVED, that all representations, commitments and agreements made by the Applicant or their representatives at the hearings in this matter or contained in any document, plat, sketch or submission delivered to the Board at any time prior to this approval, including notes contained in original or revised submissions, will be considered as conditions of approval of this Application for development and are hereby incorporated into this Resolution by reference.

BE AND THE SAME IS HEREBY GRANTED

I hereby certify that the above Resolution is a true copy of the Resolution adopted on January 6, 2016 by the Planning Board of the Township of Berkeley Heights.


Connie Valenti, Secretary

Motion to Approve
on December 9, 2015: Mr. Einbinder

Second: Mr. Woodruff

Ayes: Mr. Einbinder, Mr. Johnson, Mr. Woodruff, Mr. Niceforo,
Mr. Beal, Mr. Pirone and Mr. Cunningham

Nays: None

Abstentions: Mr. Bocchino

Absences: Mr. Monaco, Mr. Graziano and Ms. Perna

**PLANNING BOARD
TOWNSHIP OF BERKELEY HEIGHTS**

Application No.: M-2-16

RESOLUTION APPROVING APPLICATION

WHEREAS, pursuant to the applicable provisions of the "Municipal Land Use Procedures Ordinance of the Township of Berkeley Heights", an Application was submitted to the Township of Berkeley Heights Planning Board ("Board"), by Jonell Associates Development Company ("Applicant"), for Amended Minor Subdivision Approval with variances for the property located at 20 Old Farm Road and identified on the Township of Berkeley Heights Tax Map as Block 2801, Lot 64 ("Property"); and

WHEREAS, on December 9, 2015, the Board granted Application M-1-15 filed by the Applicant for Minor Subdivision Approval with variances and waivers to demolish an existing residence and detached garage on Lot 64 and to subdivide Lot 64 into two new lots to be known as Lot 64.01 and Lot 64.02 and construct a new residential home on each newly formed lot which approval was memorialized by way of Resolution adopted by the Board on January 6, 2016; and

WHEREAS, the Applicant filed the within Application for Amended Minor Subdivision approval to modify the previously approved plans to move the residential homes to be constructed approximately 15 feet closer to Old Farm Road creating a front yard setback of 35.5 feet where 50 feet is required and, in doing so, removing the previously approved variance for a rear yard setback on Lot 64.02; and

WHEREAS, the Application reviewed by the Board consisted of the following:

- Planning Board, Township of Berkeley Heights, Application for Minor Subdivision, Application No.: M-2-16, dated May 4, 2016;

- Township of Berkeley Heights Planning Board/Zoning Board of Adjustment Checklist, Minor Subdivision, dated May 4, 2016;
- Public Notice for Modification to Minor Subdivision Application, dated April 27, 2016;
- Plans entitled "Amended Minor Subdivision of Lots 64.01 & 64.02, Block 2801, 20 Old Farm Road, Township of Berkeley Heights, Union County, New Jersey," prepared by William G. Hollows, P.E., P.L.S., P.P., of Murphy & Hollows Associates, LLC, dated April 25, 2016;
- Report from Berkeley Heights Board Engineer, Thomas R. Solfaro, P.E., C.M.E., of Neglia Engineering Associates, dated May 17, 2016; and

WHEREAS, the following variances were sought by the Applicant in connection with this Application:

- Section 6.1.1B - Front Yard Setback. Minimum required 50 ft. / proposed 35.5 ft. for Lots 64.01 & 64.02.

WHEREAS, pursuant to N.J.S.A. 40:55D-12, the Applicant published a newspaper notice and duly notified property owners within 200 feet of the Property of the Application and scheduled hearing date of May 18, 2016; and

WHEREAS, a public hearing was held on the Application on May 18, 2016; and

WHEREAS, after reviewing the evidence, plans, documentation and reports submitted, the Board hereby makes the following findings:

FINDINGS

1. The Applicant was represented by Paul Weeks, Esq. Mr. Weeks stated the Applicant previously received approval for minor subdivision of the Property and the construction of a single family home on each of the newly formed lots. The Applicant seeks amendment of the previous approval to move the residential homes approximately 15 feet closer to Old Farm Road. The Applicant seeks to construct the residential homes 35.5 feet from Old Farm Road where 50 feet is required. Should the Board grant the Application the previously granted rear yard setback variance for Lot 64.02 would be eliminated.
2. William Hollows, P.E., P.L.S., P.P., of Murphy & Hollows Associates, LLC, testified on behalf of the Applicant. Mr. Hollows was duly sworn and his credentials as a licensed professional engineer and planner in the State of New Jersey were accepted by the Board. Mr. Hollows testified that after the Applicant demolished the existing residence on the Property he realized it would be better to move the houses closer to Old Farm Road creating larger rear yards. The Applicant seeks amendment of the previously approved plans to construct the new

residential homes 35.5 feet from Old Farm Road where 50 feet is required. Mr. Hollows noted the houses across the street are 35 feet from Old Farm Road. Moving the houses closer to Old Farm Road would eliminate the need for the previously granted rear yard setback variance for Lot 64.02. Everything else would remain unchanged.

3. The hearing was opened to the public for the questioning of Mr. Hollows and comments regarding the Application. The members of the public had no questions for Mr. Hollows or comments regarding the Application.
4. The Applicant offered no further witnesses and the hearing was concluded.

WHEREAS, the Board took action on the Application at the May 18, 2016 meeting and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW THEREFORE, the Township of Berkeley Heights Planning Board, after carefully considering the evidence, plans, documentation and reports submitted makes the following findings and conclusions:

1. The Board has jurisdiction over the Application.
2. The Applicant has sustained its burden of proof as to the proposed variances and the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and the benefits derived therefrom will substantially outweigh any detriments associated therewith. The Applicant previously received Minor Subdivision Approval from the Board. The Applicant seeks amendment of the previous approval to move the residential homes approximately 15 feet closer to Old Farm Road. The proposed modification is consistent with the existing neighborhood. The proposed modification is also consistent with a recommendation made by one of the Board members at the time of the original Application.


NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Berkeley Heights on this 15th day of June 2016, confirming the action taken by the Board on May 18, 2016, that the Application of Jonell Associates Development Company for Amended Minor Subdivision Approval with variances to construct the new residential homes on Lots 64.01 and 64.02 approximately 15 feet closer to Old Farm Road creating a front yard setback of 35.5

feet where 50 feet is required and, in doing so, removing the previously approved variance for a rear yard setback on Lot 64.02 is hereby granted based upon the evidence, plans, documentation and reports submitted, subject to the following conditions:

1. The Applicant shall comply with all terms and conditions of the Resolution approving Application No.: M-1-15 adopted on January 6, 2016 by the Board.
2. The Applicant shall comply with the requirements and recommendations set forth in the Neglia Engineering Report, dated May 17, 2016.
3. All representations, commitments and agreements made by the Applicant or their representatives at the hearing in this matter or contained in any plans, reports or documentation submitted to the Board at any time prior to this approval shall be considered as conditions of approval of this Application and are hereby incorporated into this Resolution by reference.

BE AND THE SAME IS HEREBY GRANTED

I hereby certify that the above Resolution is a true copy of the Resolution adopted on June 15, 2016 by the Planning Board of the Township of Berkeley Heights.


Connie Valenti, Secretary

Motion to Approve: Mr. Einbinder

Second: Mr. Niceforo

Ayes: Mr. Einbinder, Mr. Johnson, Mr. Woodruff, Mr. Niceforo, Mr. Hall, Mr. Beal, Ms. Kingsley, Mr. Bocchino, and Mr. Cunningham

Nays: None

Abstentions: None

Absences: Mr. Graziano

Applicant _____

Application # _____

Township of Berkeley Heights

Township Official

General Construction and Design & Grounds and Landscaping Considerations

<u>Applicant</u>	<u>Reviewed</u>	<u>Item</u>
(N/A) Existing single-family home Exterior improvements only proposed	()	Consider the orientation and design to maximize passive solar heat/cooling. For example, orient the building along its east-west axis to have a larger surface exposure to the south, and use deciduous vegetation to block the sun in the summer months and maximize light and heat in the winter months.
✓	()	Minimize disturbance to soils and vegetation. Use proper planning to protect vegetation during construction and prevent damage to surrounding areas.
✓	()	Create landscapes that use native plantings to limit the need for lawn chemicals and maintenance (mowing, trimming, watering). Consider using captured rainwater (rain barrel) or recycled grey water for irrigation.
✓	()	Recycle and/or salvage non-hazardous construction and demolition debris.
✓	()	Consider the use of renewable building materials and products. Consider choosing products with low VOCs and avoid products that contain hazardous chemicals (i.e. formaldehyde, cyanide).
✓	()	The use of local construction companies and products (i.e. local and sustainable woods) is recommended.
(N/A)	()	Where practicable, place parking spaces in shaded areas and consider using paving materials with an SRI value >29 (this will reflect, not absorb solar heat).

Storm Water Management Considerations

<u>Applicant</u>	<u>Reviewed</u>	<u>Item</u>
(✓)	()	Consider limiting impervious surfaces such as use of an open grid pavement system (at least 50% pervious).
(✓)	()	Consider reducing impervious cover to promote infiltration that captures and treats storm water runoff from rainfall.
(✓)	()	Consider avoiding runoff to other properties by installing an underground cistern or rain garden. This will keep water on your own property and out of the sewer.

Energy & Lighting Considerations

<u>Applicant</u>	<u>Reviewed</u>	<u>Item</u>
(N/A) Existing single-family home Exterior improvements only proposed	()	Consider providing natural daytime lighting as much as possible with skylights or solar tubes. Consider using triple-pane windows, with protection against sun damage.
(✓)	()	Consider choosing energy-efficient light bulbs. Use solar lighting outdoors.
(✓)	()	Consider use of motion sensor lighting where applicable. In commercial/industrial settings consider use of sensor controls.
(✓)	()	Conserve energy, reduce electricity use and if possible incorporate renewable energy.
(✓)	()	Consider choosing ENERGY STAR appliances.

Heating and Cooling Considerations N/A Exterior improvements only

<u>Applicant</u>	<u>Reviewed</u>	<u>Item</u>
()	()	Consider increasing amount of insulation by using 2 x 6 studs.
()	()	Consider installation programmable thermostats and attic fans to regulate heating and cooling.
()	()	Consider installation heat pumps to transfer energy heat and cold.
()	()	Consider use high efficiency boilers/furnaces.
()	()	Consider use light color roofing materials to limit heat absorbed by dark colored roofs. Consider tile or metal roofs.
()	()	Consider use roofing material with a solar reflectance index (SRI) equal or greater than 78 for low roofs and 29 for steep-sloped roofs.

Water Usage Considerations N/A Exterior improvements only

<u>Applicant</u>	<u>Reviewed</u>	<u>Item</u>
()	()	Consider use of low-flow shower heads.
()	()	Consider installing dual-flush toilets.
()	()	If there are any other sustainable building practices not mentioned before, that will be used in this project, please describe: <hr/> <hr/> <hr/>