

RARITAN TOWNSHIP BOARD OF ADJUSTMENT

**HARDEEP GILL AND JASBIR VIRDI
10 MILLS COURT
BLOCK 74.01, LOT 9**

APPLICATION BOA-15-2024

**RESOLUTION MEMORIALIZING GRANT OF SEVEN “C(2)” VARIANCES TO
ALLOW VARIOUS NONCONFORMING STRUCTURES TO REMAIN AS SITUATED
ON THE PROPERTY**

RESOLUTION NO. 2025-14

WHEREAS, Hardeep Gill and Jasbir Verdi (the “**applicants**”) are the owners of a 0.9184 acre lot designated on the Raritan Township tax map as Block 74.01, Lot 9 and located at 10 Mills Court (the “**property**”) which is situated in the R-3 Rural Residential District (the “**R-3 Zone**”), and on which property is located an existing principally permitted single-family dwelling (the “**existing dwelling**”) as well as a paved driveway, paver walkway, pool (the “**existing pool**”), patio (the “**existing patio**”), a wood pad with gazebo (the “**existing gazebo**”), pool heater (the “**existing pool heater**”), pool filter (the “**existing pool filter**”), a six-foot high fence (the “**existing fence**”) and landscaping (collectively the driveway, walkway, existing pool, existing patio, existing gazebo, existing pool heater, existing pool filter, existing fence and landscaping are referred to as the “**existing improvements**”);

WHEREAS, the applicants made application (the “**application**”) to the Raritan Township Board of Adjustment (the “**Board**”) seeking various “c(2)” variances from the Schedule of Area, Yard and Building Requirements (the “**Schedule**”), which is incorporated by reference by and into ordinance section 296-131, to allow certain of the existing improvements which are encroaching into the setback areas of the property, including the existing patio, existing gazebo, existing pool heater, and existing pool filter (the “**encroaching structures**”) to remain, as well as to allow the existing fence to remain (the proposal to allow the encroaching structures and the existing fence to remain is referred to as the “**proposed development**”), and to allow a deviation of the impervious coverage on the property;

WHEREAS, in the absence of an application for site plan or subdivision approval, the request for the “c” variances confers exclusive subject matter jurisdiction over the application with the Board pursuant to N.J.S.A. 40:55D-20 and -70c;

WHEREAS, the application was deemed to be complete;

WHEREAS, the Board considered the application at a duly noticed public hearing on August 7, 2025, with affidavits of service and publication of the notices of the hearing on the application being submitted to and on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicants represented

themselves pro se, and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

WHEREAS, the following individuals testified under oath during the hearing, were subject to cross examination, and all testimony is part of the record in this matter:

1. Jasbir Virdi (applicant),
2. Hardeep Gill (applicant), and
3. Jeff Vaccarella, AICP, PP (Board's planning expert);

WHEREAS, the following document was submitted with regard to the application, is on file with the Board, and is part of the record in this matter:

1. "Survey of Property at 10 Mills Court" prepared by Dominick J. Venditto, III, NJPLS, dated October 25, 2024 (the "survey");

WHEREAS, no exhibits were entered into evidence during the hearing;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS AND TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. **The Property, Existing Improvements, and Zoning.** The property is 0.9184 acres in size, situated in the R-3 Zone and is developed with the principally permitted existing dwelling and the existing improvements. The property, with two front yards and two side yards, is a through lot because it fronts Mills Court and abuts Dory Dilts Road in the rear. The applicants have installed the existing fence within 50 feet of the front yard setback along Dory Dilts Road and propose no additional development on the property. The reason for their application is to bring their property into conformity as they have discovered that it contains various nonconformities as follows: (1) the existing patio is situated within the side yard setback area; (2) the existing patio is situated within the front yard (along Dory Dilts Road) setback area, (3) the existing pool heater is situated six feet from the side yard property line where a minimum of 15 feet is required; (4) the existing pool filter is situated six feet from the side yard property line where a minimum of 15 feet is required; (5) the existing gazebo is setback 34.2 feet from the front yard (along Dory Dilts Road) property line where 50 feet is required; (6) the existing hard surface coverage on the property is 22.2% where the maximum permitted hard surface coverage is 20%; and (7) the existing fence is six feet high where the maximum permitted height of a

fence that is located closer than 50 feet from the street is four feet. The Schedule establishes the bulk requirements for lots in the R-3 Zone, including a minimum accessory structures side yard setback of 15 feet, a minimum accessory structures front yard setback of 50 feet, and a maximum hard surface coverage of 20%. Ordinance section 296-142 provides requirements for fences, including a maximum fence height of four feet.

2. **The Application, Required and Requested Relief.** The history of improvements on the property is important to understanding the various nonconformities. According to the testimony of the applicants, they purchased the property in February of 2023. At that time, in addition to the existing dwelling, the property was developed with various improvements and the following improvements are relevant here: the existing pool, existing patio, existing gazebo, existing pool heater, existing pool filter (the “**pool and pool related structures**”). The prior owners obtained permits to install the pool and pool related structures, with approval to install them in conforming locations and with a conforming hard surface coverage. However, there is no record of certificates of approval after installation. The deviations were only discovered when the applicants submitted the as-built survey for the existing fence, which is also nonconforming because the fence permit approved a four-foot-high fence and the existing fence is six feet high. In sum, there are seven (7) deviations for which the applicants require “c” variances and the applicants have requested “c(2)” variances as follows:

- a. A “c(2)” variance from the Schedule to allow the existing patio to be situated in the side yard setback area,
- b. A “c(2)” variance from the schedule to allow the existing patio to be situated in the front yard setback area abutting Dory Dilts Road,
- c. A “c(2)” variance from the Schedule to allow the existing pool heater to be setback six feet from the western side property line where a minimum side yard setback of 15 feet is required,
- d. A “c(2)” variance from the Schedule to allow the existing pool filter to be setback six feet from the western side property line where a minimum side yard setback of 15 feet is required,
- e. A “c(2)” variance from the Schedule to allow the existing gazebo to be setback 34.2 feet from the front yard property line along Dory Dilts Road, where a minimum front yard setback of 50 feet is required,
- f. A “c(2)” variance from the Schedule to allow a hard surface coverage of 22.2% where the maximum hard surface coverage permitted is 20%, and
- g. A “c(2)” variance from ordinance section 296-142.C.(1) to allow the existing fence to be six feet high where the maximum height of a fence that is situated within 50 feet from the street is four feet.

3. **Standards for Considering the Requested “C” Variances.** The Board has the power to grant “c” variances under two sets of criteria: the “c(1)” or so-called “hardship” criteria and/or “c(2)” or so-called “benefits v. burdens” criteria. While the applicants seek “c(2)” variances, the Board will address the standards for Board consideration of both types of “c” variances, which are as follows:

a. **Standards for Consideration of “C(1)” Variances.** The Board has the power to grant “c(1)” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(1) where: (1) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (2) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (3) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, “the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.” This is the so-called “positive criteria” of a “c(1)” variance. Significantly, the hardship that the applicant must prove is not inutility – that without the variance the property would be zoned into inutility. While inutility caused by a zoning regulation would require a variance to avoid an unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit “the extent” to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available for intentionally created situations as constituting “self-created” hardship. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979). Neither is a hardship variance available to accommodate mistakes. Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956). Neither is a hardship variance available to relieve “personal hardship” of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). Finally, the Board may not exercise its power to grant a “c(1)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Standards for Consideration of “C(2) Variances.** The Board has the power to grant “c(2)” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(2) where “in an application or appeal relating to a specific piece of property the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.” This is the so-called “positive criteria” of a “c(2)” variance. The zoning benefits resulting from permitting the deviation(s) must be for the community (“improved zoning and planning that will benefit the community”) and not merely for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The Appellate Division has held that the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire

development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Stary Dom v. Mauro, 216 N.J. 16, 32-33 (2013). Finally, the Board may not exercise its power to grant a “c(2)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” Again, the phrase “zone plan” as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1,4,21 (1987).

4. **Findings and Conclusions as to the “C(2)” Setback and Hard Surface Coverage Variances.** As set forth above, the applicants have requested “c(2)” variances from the Schedule to allow the following: (1) the existing patio to be situated in the side yard setback area, (2) the existing patio to be situated in the front yard setback area abutting Dory Dilts Road, (3) the existing pool heater to be setback six feet from the western side property line where a minimum side yard setback of 15 feet is required, (4) the existing pool filter to be setback six feet from the western side property line where a minimum side yard setback of 15 feet is required, (5) the existing gazebo to be setback 34.2 feet from the front yard property line along Dory Dilts Road, where a minimum front yard setback of 50 feet is required, and (6) a hard surface coverage of 22.2% where the maximum hard surface coverage permitted is 20%. As a preliminary matter the Board finds that the applicants were correct to apply for “c(2)” – and not “c(1)” - variances to allow the setback and hard surface coverage deviations because “c(1)” variances are not available because there is no “hardship” preventing the applicants from correcting the nonconformities on the property. There is no evidence to suggest that the applicants are unable to move the pool and pool related structures to compliant locations on the property or that they are unable to reduce the hard surface coverage on the property to comply with the ordinance regulations. That said, the Board finds that it can and should grant the requested “c(2)” variances. The Board’s findings and conclusions as to the positive and negative criteria of the requested “c(2)” setback and hard surface cover variances are as follows:

a. **Findings as to the Positive Criteria of the “C(2)” Setback and Hard Surface Coverage Variances.** As to the positive criteria of the “c(2)” variances, the Board finds as follows. First, according to the testimony of the applicants, the pool and pool related structures were installed in 2001. The Board finds that they have existed on the property for over two decades without issue. Second, the Board finds that requiring the applicants to move any of the pool related structures so as to situate them in a compliant location, or to require the applicants to reduce the hard surface coverage on the property would cause significant disturbance to the land. Third, the Board finds that granting the “c(2)” setback and hard surface coverage variances to allow the pool and pool related structures to remain in their current locations will promote the purposes of the Municipal Land Use Law (the “MLUL”) as enunciated in N.J.S.A. 40:55D-2a, by avoiding an unnecessary disturbance to the land which promotes the general welfare, and 2j, by promoting the conservation of resources and preventing the degradation of the environment. Fourth, the Board finds that the zoning benefits arising out of the grant of the “c(2)” setback and hard surface coverage variances constitute public benefits (not merely private benefits for the applicants) and the zoning benefits will substantially outweigh any detriments provided that the

conditions set forth below are imposed and complied with. For all of the foregoing reasons, the Board finds that the applicants have proven the positive criteria of the requested “c(2)” setback and hard surface coverage variances.

b. **Findings as to the Negative Criteria of the “C(2)” Setback and Hard Surface Coverage Variances.** As to the negative criteria of the requested “c(2)” variances, the Board finds as follows. First, the Board finds that allowing the setback and hard surface coverage deviations which will allow the pool and pool related structures to remain in their current locations will not have a substantial negative impact on the property or the surrounding lots. The Board further finds that, provided the conditions set forth below are imposed and complied with, the requested “c(2)” variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. For the foregoing reasons, the Board finds that the applicant has proven the negative criteria of the requested “c(2)” setback and hard surface coverage variances.

5. **Findings and Conclusions as to the “C(2)” Fence Variance.** As set forth above, the applicants request a variance from ordinance section 296-142.C.(1) to allow the existing fence to be six feet high where the maximum height of a fence that is situated within 50 feet from the street is four feet. As a preliminary matter the Board finds that the applicants were correct to apply for a “c(2)” – and not a “c(1)” - variance to allow the fence height deviation because a “c(1)” variance is not available because there is no “hardship” preventing the applicants from correcting the fence height deviation. There is no evidence to suggest that the applicants are unable to replace the existing fence with one that conforms to the ordinance fence regulations. That said, the Board finds that it can and should grant the requested “c(2)” variance. The Board’s findings and conclusions as to the positive and negative criteria of the requested “c(2)” fence variance are as follows:

a. **Findings as to the Positive Criteria of the “C(2)” Fence Variance.** As to the positive criteria of the “c(2)” fence variance, the Board finds as follows. First, the existing fence is situated just inside the property line at the rear of the property along Dory Dilts Road, a relatively busy two-way street, with numerous large trees lining the existing fence. Second, the Board understands, based on the applicants’ testimony, that various neighbors have commented that the fence enhances the visual aesthetics of the neighborhood. Third, the Board finds that granting the “c(2)” fence variance to allow the existing fence to remain will promote the aesthetic purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a, by providing a visually pleasing feature to the neighborhood which promotes the general welfare, and 2i, by promoting a desirable visual environment. Fourth, the Board finds that the zoning benefits arising out of the grant of the “c(2)” fence variance constitute public benefits (not merely private benefits for the applicants) and the zoning benefits will substantially outweigh any detriments provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, the Board finds that the applicants have proven the positive criteria of the requested “c(2)” fence variance.

b. **Findings as to the Negative Criteria of the “C(2)” Fence Variance.** As to the negative criteria of the requested “c(2)” fence variance, the Board finds as follows. First, the Board finds that allowing the fence height deviations which will allow the existing fence to

remain in its current location will not have a substantial negative impact on the property or the surrounding lots. The Board further finds that, provided the conditions set forth below are imposed and complied with, the requested “c(2)” variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. For the foregoing reasons, the Board finds that the applicant has proven the negative criteria of the requested “c(2)” fence variance.

6. **Conclusion to Grant all of the Requested “C” Variances.** For all of the foregoing reasons set forth above as to each of the requested “c” variances, the Board concludes that it can and should grant the requested “c(2)” variances provided that the conditions set forth below are imposed and complied with.

7. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2025), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). The conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON AUGUST 7, 2025 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE CONDITIONS SET FORTH BELOW:

B. RELIEF GRANTED

1. **Grant of “C(2)” Side Yard Setback Variance as to the Existing Patio.** Subject to the conditions set forth below, a “c(2)” variance is hereby granted from the Schedule to allow the existing patio to remain where it is currently located within the westerly side yard setback area, where the minimum required side yard setback in the R-3 Zone is 15 feet.

2. **Grant of “C(2)” Front Yard Setback Variance as to the Existing Patio.** Subject to the conditions set forth below, a “c(2)” variance is hereby granted from the Schedule to allow the existing patio to remain where it is currently located within the front yard setback area abutting Dory Dilts Road, where the minimum required front yard setback in the R-3 Zone is 50 feet.

3. **Grant of “C(2)” Side Yard Setback Variance as to the Existing Pool Heater.** Subject to the conditions set forth below, a “c(2)” variance is hereby granted from the Schedule

to allow the existing pool heater to be located 6 feet from the westerly side property line, where the minimum required side yard setback in the R-3 Zone is 15 feet.

4. **Grant of "C(2)" Side Yard Setback Variance as to the Existing Pool Filter.**

Subject to the conditions set forth below, a "c(2)" variance is hereby granted from the Schedule to allow the existing pool filter to be located 6 feet from the westerly side property line, where the minimum required side yard setback in the R-3 Zone is 15 feet.

5. **Grant of "C(2)" Front Yard Setback Variance as to the Existing Gazebo.**

Subject to the conditions set forth below, a "c(2)" variance is hereby granted from the Schedule to allow the existing gazebo to be located 34.2 feet from the front property line abutting Dory Dilts Road, where the minimum required front yard setback in the R-3 Zone is 50 feet.

6. **Grant of C(2)" Hard Surface Coverage Variance.** Subject to the conditions set forth below, a "c(2)" variance is hereby granted from the Schedule to allow a hard surface coverage of 22.2% where the maximum hard surface coverage permitted is 20%.

7. **Grant of "C(2)" Fence Variance.** Subject to the conditions set forth below, a "c(2)" variance is hereby granted from ordinance section 296-142.C.(1) to allow the existing fence to be six feet high where the maximum height of a fence that is situated within 50 feet from the street is four feet.

C. **CONDITIONS**

1. **Permits Required for Existing Nonconforming Improvements.** The applicant shall apply for and obtain the following permits within 90 days from the date of adoption of the within resolution):

- a. A permit for the exiting fence.
- b. A permit for the existing gazebo.
- c. A permit for the existing patio.
- d. A permit for the pool heater and filter.

2. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to any and all hearings on any preliminary and/or final site plan applications, prior to the issuance of zoning permits, construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in all relief granted automatically terminating and becoming null and void.

3. **Specific Approvals and Permits.** The within approval is conditioned upon the applicant obtaining permits and/or approvals from all applicable agencies and/or departments.

4. **Subject to Other Laws and Approvals.** The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or conditions of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

VOTE ON MOTION MADE AND SECONDED ON AUGUST 7, 2025:

THOSE IN FAVOR: BLOCK, DAMJI, DREWES, FARSIU, FERRARO, KRATINA & SCHAEFER.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on March 5, 2026 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
BLOCK	X			
DAMJI	X			
DREWES				X
FARSIU				X
FERRARO				X
KRATINA	X			
SCHAEFER				X

ATTEST: Taylor Vaughn
TAYLOR VAUGHN
Board Secretary