

TOWNSHIP OF BERKELEY
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
OCTOBER 13, 2010
7:00 PM PUBLIC HEARING

- A. SALUTE TO THE FLAG
- B. ROLL CALL, DECLARATION OF QUORUM
- C. SUNSHINE ACT STATEMENT: This meeting was advertised in the Asbury Park Press, and posted on the Township's bulletin board as required by the "Open Public Meeting Act".
- D. Please be advised that there is to be **NO SMOKING** in this building in accordance with New Jersey Legislation.
- E. OLD/NEW BUSINESS:
- F. AGENDA:

1. **OPORTO** **BOA#10-5317**

Variance(s) requested: Bulk Variance

Project: Request for Variance for Addition Already Constructed

Block(s): 10.12 Lot(s): 100

Address: 89 Chesterfield Ln. Zone: RDA (R-400 PRRC)

Denial Reads: The Applicant is requesting a variance for an addition that has been constructed without permits and has left a 14 foot setback where 20 feet is required.

2. **JERMAN** **BOA#09-5304 (Partially Heard 8/11/10)**

Variance(s) requested: Bulk Variances

Project: Single-family dwelling on an Undersized Lot fronting on an Unimproved Road

Block(s): 529 Lot(s): 9

Address: Hoover Ave. Zone: R-125

Denial Reads: The Applicant wishes to construct a single-family dwelling on a 7,500 s.f. lot where 12,500 s.f. is required, a 50 foot lot frontage where 100 feet is required, fronting on an Unimproved Road.

3. **JERMAN** **BOA#09-5272 (Carried from 8/25/10)**
(RENOTICE WAS REQUIRED)

Variance(s) requested: Bulk Variances
Project: Single-family dwelling on an Undersized Lot
Block(s): 509 Lot(s): 11
Address: Roosevelt Ave. Zone: R-125
Denial Reads: Applicant proposes to construct a single-family dwelling on this 5,500 s.f. lot where 12,500 s.f. is required with a 50 foot lot frontage where 100 feet is required, 20 foot combined side yard setback where 25 feet is required, and a 24 foot rear yard setback where 30 feet is required.

4. **BARTON** **BOA#08-5258**

Variance(s) requested: Use and Bulk Variances
Project: Remove and Replace Single-Family Dwelling
Block(s): 1694 Lot(s): 66
Address: 12 Second Lane Zone: BR (Beachfront Residential)
Denial Reads: The Applicant proposes to replace a non-conforming single-family dwelling with a non-conforming single-family dwelling (which is only allowed in the event of a partial destruction by fire or other natural disaster) that will increase the width of the building which is not allowed in the BR-Zone.

G. RESOLUTIONS TO BE ADOPTED.

H. APPROVAL OF MEETING MINUTES.

I. ADJOURNMENT: Next meeting of the Board of Adjustment will be on October 27, 2010 at 7:00 PM



JOHN H. ALLGAIR, 1983-01
DAVID J. SAMUEL, P.E., P.P.
JOHN J. STEFANI, P.E., L.S., P.P.
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BEHRAM TURAN, P.E.

MEMO TO: Berkeley Township Zoning Board of Adjustment

FROM: Robert J. Russo, P.E., P.P., C.M.E.,
Office of the Zoning Board of Adjustment Engineer and Planner

DATE: August 23, 2010

RE: **Oporto Variance – Completeness Review #1**
Application: Addition
Block: 10.12, Lot 100
Fronting on: 89 Chesterfield Lane
Zoning District: RDA (R-400 PRRC)
Plans: Survey – Prepared by Seneca Survey Co., Inc.; dated September 25, 2009
BOA#: 10-5317
Our File No.: PBAZ0010.18/600.01

In accordance with your request, our office has reviewed the following variance application submitted for the above referenced property. The following comments are offered with regard to the same:

A. PROJECT OVERVIEW

1. The denial states the applicant "is requesting a variance for an addition that has been constructed with out permits and has left a 14' setback where 20' is required".
2. PRRC Zone Requirements and Variances Requested (as per Schedule I, Section 35-95)

<u>Primary Use</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Requested</u>
Min. Lot Area	5,000 sf	6,600 sf	6,600 sf	<input type="checkbox"/>
Average Lot Frontage	50 ft	66 ft	66 ft	<input type="checkbox"/>
Front Yard Setback	20 ft	20.8 ft	20.8 ft	<input type="checkbox"/>
Rear Yard Setback	20 ft / 14 ft*	14.46 ft	14.46 ft	<input checked="" type="checkbox"/>
Side Yard Setback	5 ft	6.95 ft	6.95 ft	<input type="checkbox"/>
Combined Side Yard	15 ft	17.71 ft	17.71 ft	<input type="checkbox"/>
Max. Building Height	40 ft	< 40 ft	< 40 ft	<input type="checkbox"/>

- * Pursuant to 35-101.6(f)(3) the rear yard setback shall be at least twenty (20) feet, as measured from the closest point of the rear wall of the principal building structure to the rear property line (provided that where an attached seasonal patio enclosure, screened porch, porch enclosure, wood deck or other seasonal building addition is provided or proposed, the required rear yard setback may be reduced to a minimum of fourteen (14) feet).

B. GENERAL REVIEW COMMENTS

1. The applicant should provide a description of the existing addition.
2. Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a bulk variance request if :





Memo to Berkeley Township Zoning Board
Our File: PBAZ0010.18
August 23, 2010
Page 2 of 2

- c.(1) where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.
- c.(2) where in an application or appeal relating to a specific piece of property the purposes of this act...would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment...

It has to be determined whether the property in question meets any or all of the reasons established in the MLUL to permit the granting of the variance and whether the enforcement of the Berkeley Township General Ordinances will cause undue hardship to the property owner.

C. MISCELLANEOUS

1. Should the Zoning Board of Adjustment grant the relief requested by the applicant, approval of this application should be conditioned upon the following:
 - a. The Applicant certifying to the following:
 - i. The structure should not encroach into existing easements (i.e. shade tree, utility, drainage, etc) without proper consent from the Township.
 - ii. The grading if any, will not impact adjacent property and that the plan as submitted is a true and accurate representation of the existing and proposed improvements on the site.
 - iii. Payment all outstanding professional review fees of the Board and the Township.
 - b. The Applicant providing the following to the Building Department, if required, at time of application for a building permit:
 - i. The applicant submitting for a grading permit in accordance with Section 11-1.5.
 - ii. The applicant submitting architectural plans of the proposed dwelling, to show compliance with building codes.

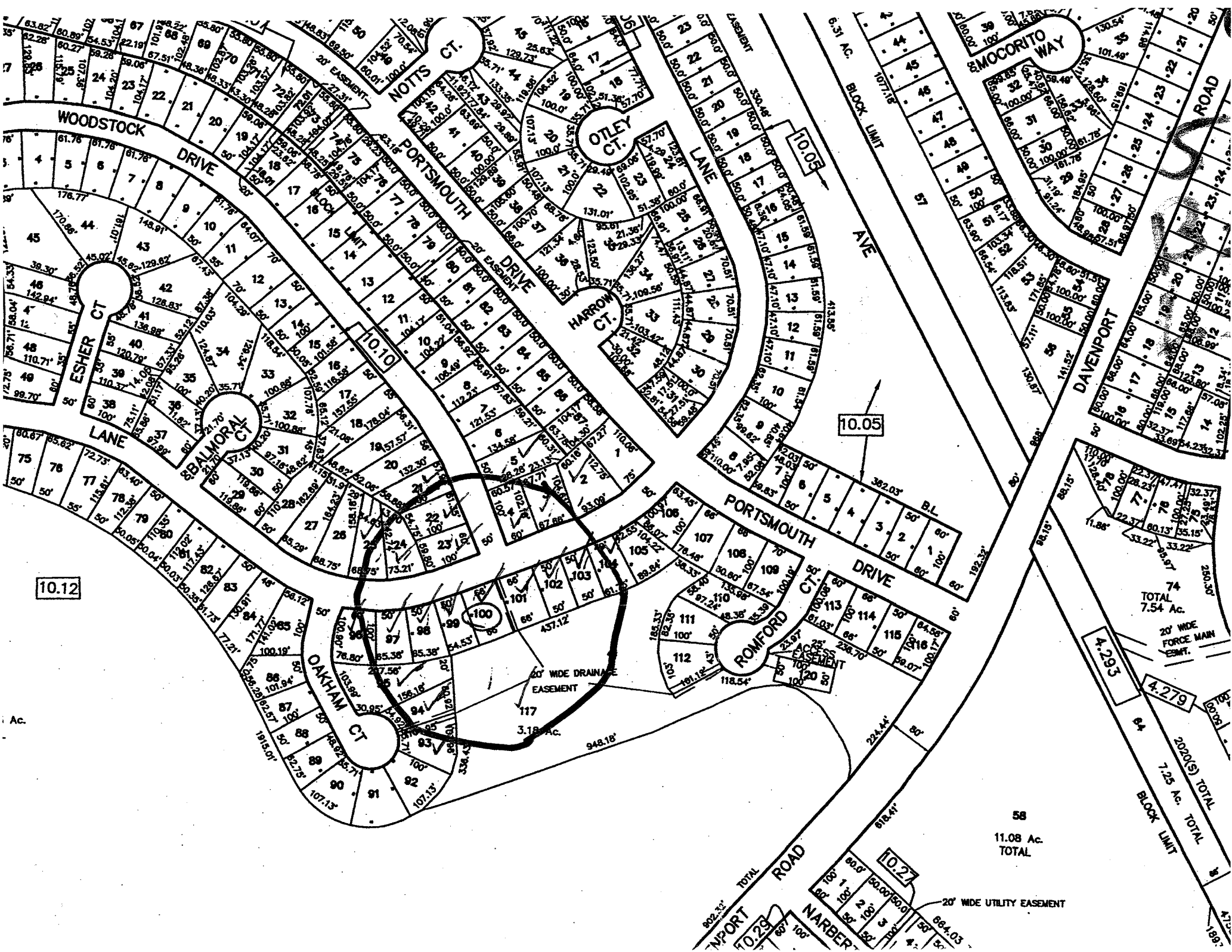
The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board

Should you have any questions regarding this matter, please do not hesitate to contact this office.

RJR/rr

cc: Edward Liston, Esq. - Board Attorney
Dominico Oporto, 89 Chesterfield Lane, Toms River, NJ – Applicant
Richard Mazzei, Esq. – Applicant's Attorney





10.12

10.05

10.2

10.23

58
11.08 Ac.
TOTAL

74
TOTAL
7.54 Ac.

2020(S) TOTAL
7.25 Ac. TOTAL
BLOCK LIMIT

4.293

4.279

10.05

Ac.



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MEMO TO: Berkeley Township Zoning Board of Adjustment

FROM: Robert J. Russo, P.E., P.P., C.M.E.,
Office of the Zoning Board of Adjustment Engineer and Planner

DATE: July 1, 2010

Re: **Jerman – Hoover Avenue – Review #1**
Application: Single Family Dwelling on an Undersized
Lot Fronting on an Unimproved Road
Block, 529, Lot 9
Fronting on: Hoover Avenue
Zoning District: R-125
Plan: Variance Plan, prepared by PDS, LLC
Dated June 27, 2008, Latest Revision Date of April 24, 2010
BOA: 09-5304
Our File No.: PBAZ0529.01/600.01

In accordance with your request and the provisions of Section 35-20, our office has reviewed the following variance application submitted for the above referenced property. The following comments are offered with regard to the same:

A. Project Overview

1. The denial states "the applicant to construct a single family dwelling on a 7,500 s.f. lot where 12,500 s.f. is required, a 50' lot frontage where 100' is required, on an unimproved road". The site is located on an unimproved portion of Hoover Avenue approximately 200 LF north of its intersection with Central Blvd in the R-125 zone.
2. **R-125 Zone Requirements and Variances Requested** (as per Schedule I, Section 35-95)

<u>Primary Use</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Requested</u>
Min. Lot Area	12,500 sf	7,500 sf	7,500 sf	<input checked="" type="checkbox"/>
Min. Lot Frontage	100 ft	50 ft	50 ft	<input checked="" type="checkbox"/>
Front Yard Setback	35 ft	N/A	44 ft	<input type="checkbox"/>
Rear Yard Setback	30 ft	N/A	63 ft	<input type="checkbox"/>
Side Yard Setback	10 ft	N/A	10 ft	<input type="checkbox"/>
Combined Side Yard	25 ft	N/A	25 ft	<input type="checkbox"/>
Max. Lot Coverage by Building	25%	N/A	14.1 %	<input type="checkbox"/>
Max. Building Height	35 ft	N/A	<35 ft	<input type="checkbox"/>

B. General Review Comments

1. The applicant should provide documentation of a good faith effort to acquire sufficient adjoining lands to achieve a conforming lot, or by offering to sell the non-conforming property to adjacent owners.





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Memo to: Zoning Board of Adjustment
Our File: PBAZ0529.01
July 1, 2010
Page 2 of 4

2. Pursuant to Section 35-89.12 and 35-54, every new dwelling unit shall provide no less than 2 off-street parking spaces and paved driveways are required as access to garages or other off-street parking spaces. The applicant indicates a garage is proposed. The applicant is proposing a stone driveway with a concrete apron. We recommend that the applicant conform to the Ordinance by constructing a paved driveway.
3. The proposed lot is to be served by public water and by the public sanitary sewer system.
4. Pursuant to 17-5.1, every principal building shall be built upon a lot with frontage upon a public street improved to meet the Township requirement for improved public streets or for which such improvements have been guaranteed by the posting of a performance guarantee:

For the Boards clarification, pursuant to 17-5.6 in no event shall the applicant be required to provide less than the following minimum requirements:

- a. The roadway width must be at least thirty (30) feet.
- b. The entire roadway width shall consist of six (6) inches of DGA, bituminous base course, and bituminous surface course.
- c. The newly paved street shall provide direct access to an approved, improved public street to protect the health, safety and welfare of all future residents and to ensure proper vehicular access by police, fire, first aid and other emergency and essential services.

The Board should note items a, b and c represent the minimum requirements, and could request the applicant provide additional items such as curb, sidewalk and street lighting to at a minimum to protect the health safety and welfare of residents.

It is recognized that, in rare cases, exceptional and extraordinary conditions or the uniqueness of a particular lot may require the waiver of frontage upon a fully improved street. The Board may consider and waive strict compliance with this requirement, if requested by the applicant.

5. The applicant is requesting a waiver from the requirement of providing a 25' radius gravel turn-around at the terminus of Hoover Avenue per Section 35-73 3b. We recommend that some form of turn-a-round be provided.
6. The applicant has requested a waiver from providing a proposed street lighting plan indicating lighting in conformance with the illumination Engineering Society of North America (IESNA) standards.
7. The applicant has indicated there are no wetland areas within 150 feet of the site. The applicant is requesting a waiver from providing an NJDEP Presence / Absence Letter of Interpretation (LOI).
8. The applicant is not proposing to extend the existing sanitary sewer main across the frontage of the property to the southern property line. The applicant is proposing to connect the sanitary sewer





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Memo to: Zoning Board of Adjustment
Our File: PBAZ0529.01
July 1, 2010
Page 3 of 4

lateral for the dwelling into the existing sanitary sewer manhole on Hoover Avenue. The applicant has indicated that this will be the last lot serviced by the sewer main and that the existing dwellings on Central Boulevard are serviced by a sanitary sewer main in Central Boulevard. We defer further review of same to the Berkeley Township Sewage Authority. However, if the sewer main is not extended, we recommend that the sewer lateral be connected into the existing sanitary sewer main as opposed to directly to the existing manhole.

9. The applicant should correct the front yard setback dimension indicated on the plans. 48' is noted, and 44' has been provided.
10. Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a bulk variance request if:
 - c.(1) where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.
 - c.(2) where in an application or appeal relating to a specific piece of property the purposes of this act...would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment...

It has to be determined whether the property in question meets any or all of the reasons established in the MLUL to permit the granting of the variance and whether the enforcement of the Berkeley Township General Ordinances will cause undue hardship to the property owner.

11. The applicant should provide testimony to satisfy both the positive and negative criteria of the Municipal Land Use Law, such that:
 - a. The proposed use is particularly suited to the particular property
 - b. There are special reasons that allow a departure from the zoning regulations in this particular case. The granting of a variance must be shown to implement one or more of the purposes of the MLUL 40:55D-2.
 - c. The variance can be granted without substantial detriment to the public good.
 - d. The variance will not substantially impair the intent and purpose of the zoning plan and ordinance.

C. Miscellaneous

1. Should the Zoning Board of Adjustment grant the relief requested by the applicant, approval of this application should be conditioned upon the following:
 - a. The applicant resubmitting for review by the Zoning Board of Adjustment Engineer a plan which includes those items covered above and discussed at the Board meeting.





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Memo to: Zoning Board of Adjustment
Our File: PBAZ0529.01
July 1, 2010
Page 4 of 4

- b. The applicant certifying to the following:
- i. The proposed structure should not encroach into existing easements (i.e. shade tree, utility, drainage, etc.) without proper consent from the Township and shall not encroach upon private wells or individual septic systems or disposal fields.
 - ii. The proposed grading, if any, will not impact adjacent property; that the plan as submitted is a true and accurate representation of the existing and proposed improvements on the site, and payment all outstanding professional review fees of the Board and the Township.
- c. The applicant providing the following to the Building Department at time of application for a building permit:
- i. The applicant making payment into the Roadway Trust Fund for improvements to Hoover Avenue including the applicants fair share of the costs for street lighting, curbs, sidewalks, grading, shade trees and soil stabilization.
 - ii. The applicant making payment into the Drainage Trust Fund in accordance with Sections 17-5.6 (g) and 35-72.7.
 - iii. The applicant providing a proposed street lighting plan indicating lighting in conformance with the illumination Engineering Society of North America (IESNA) standards, if not waived by the Board.
 - iv. The applicant submitting for a grading permit in accordance with Section 11-1.5.
 - v. The applicant submitting architectural plans of the proposed dwelling, to show compliance with building codes.
 - vi. The applicant submitting a Tree Removal / Replacement Plan in accordance with Ordinance 03-25-0AB.
 - vii. Proof of approval and/or waivers from all agencies having jurisdiction including:
 - 1. Berkeley Township Sewage Authority
 - 2. Ocean County Soil Conservation, if required
 - 3. Ocean County Planning Board
 - 4. Berkeley Township Municipal Utilities Authority

The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board.

Should you have any questions regarding this matter, please contact Kristie Armour at (732) 462-7400 Extension 130.

RJR/rr

cc: Edward Liston, Esq. - Board Attorney
Jeffrey Jerman, Applicant
William A. Stevens, P.E., Applicant's Engineer/Surveyor



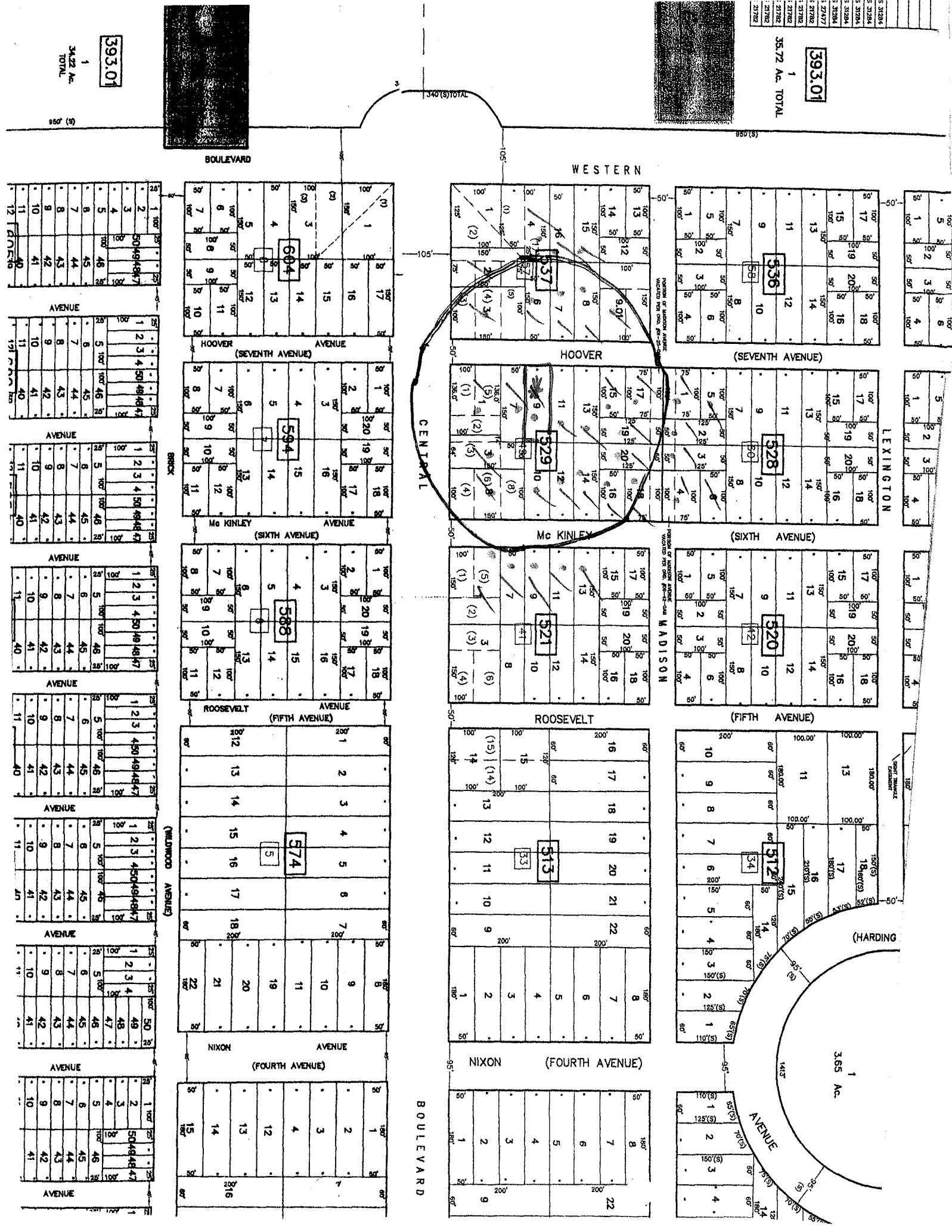
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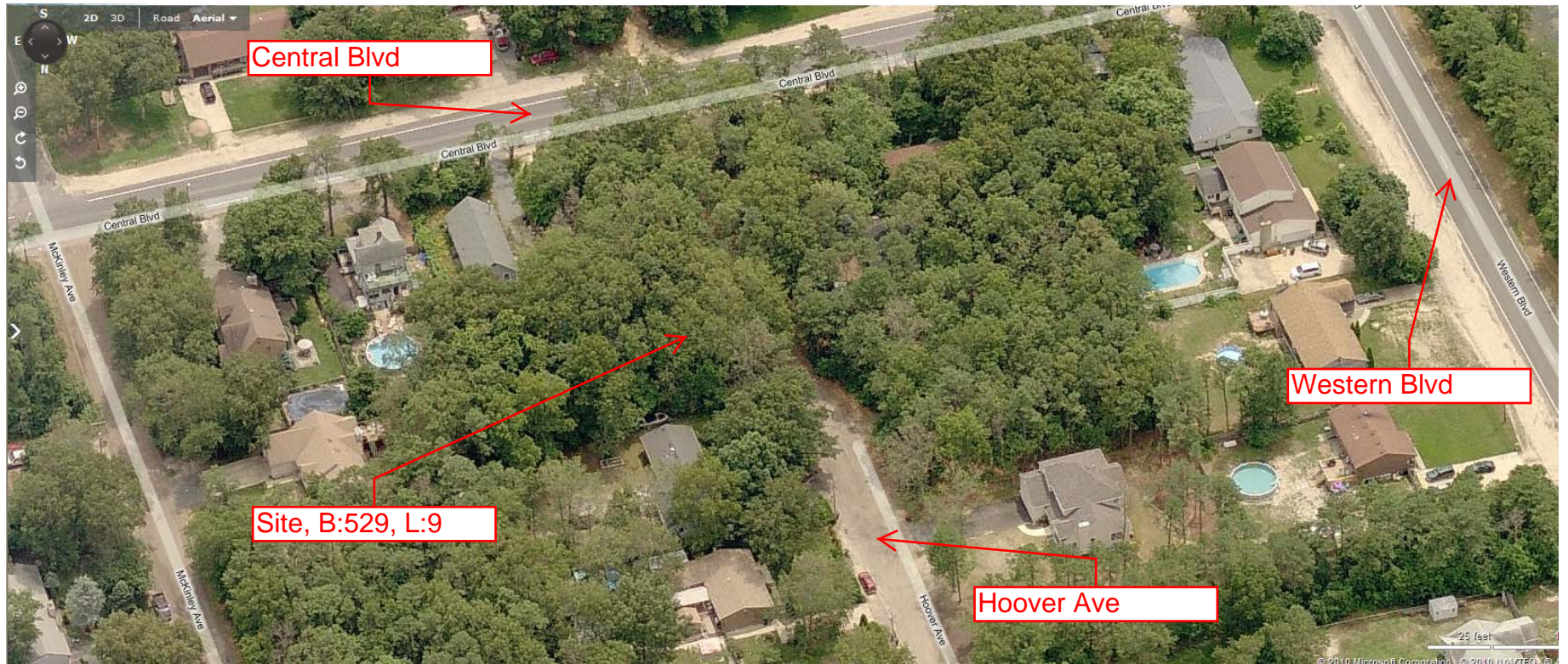
393.01

35.72 AC TOTAL

393.01

34.22 Ac.
TOTAL







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MEMO TO: Berkeley Township Zoning Board of Adjustment

FROM: Robert J. Russo, P.E., P.P., C.M.E.
Office of the Zoning Board of Adjustment Engineer and Planner

DATE: August 3, 2010

RE: **Jerman Variance – Review #2**
Application: Single Family Dwelling on an undersized lot
Block 509, Lot 11
Zoning District: R-125
Fronting on: Roosevelt Avenue
Plan: Property Development Plan, prepared by
Nelke, Constantine & Assoc., Inc.
dated March 16, 2009, Revised July 30, 2010

BOA#: 09-5272
Our File No.: PBAZ0509.02/ 600.01

In accordance with your request, our office has reviewed the following variance application submitted for the above referenced property. The following comments are offered with regard to the same:

A. PROJECT OVERVIEW

1. The denial states that the "applicant proposes to construct a single-family dwelling on this 5,500 s.f. lot where 12,500 s.f. is required with 50 foot lot frontage where 100 feet is required, 20' combined sideyard setback where 25' is required and a 24' rear yard setback where 30' is required". The lot in question is located on the east side of Roosevelt Avenue, approximately 100' to the south of its intersection with Virginia Avenue, within the R-125 zone. The lot is currently vacant and wooded. The applicant is proposing to construct a three bedroom single family dwelling and associated site improvements on the lot. Roosevelt Avenue is currently paved with a 28' wide pavement width.
2. R-125 Zone Requirements and Variances Requested (as per Schedule I, Section 35-95)

<u>Primary Use</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Requested</u>
Min. Lot Area	12,500 sf	5,500 sf	5,500 sf	<input checked="" type="checkbox"/>
Min. Lot Frontage	100 ft	50 ft	50 ft	<input checked="" type="checkbox"/>
Front Yard Setback	35 ft	N/A	58 ft	<input type="checkbox"/>
Rear Yard Setback	30 ft	N/A	24 ft	<input checked="" type="checkbox"/>
Side Yard Setback	10 ft	N/A	10 ft	<input type="checkbox"/>
Combined Side Yard	25 ft	N/A	20 ft	<input checked="" type="checkbox"/>
Max. Lot Coverage by Building	25%	N/A	15%	<input type="checkbox"/>
Max. Building Height	35 ft	N/A	< 35 ft	<input type="checkbox"/>
Min. Floor Area	1,250 sf	N/A	1,650 sf	<input type="checkbox"/>

*In accordance with Note #3 with regard to Schedule I, the following minimum floor areas apply:
1-bedroom 950 sf, 2-bedroom 1,100 sf, 3-bedroom + 1,250 sf.

B. GENERAL REVIEW COMMENTS

1. The applicant should provide documentation of a good faith effort to acquire sufficient adjoining lands to achieve a conforming lot, or by offering to sell the non-conforming property to adjacent owners.
2. The applicant is proposing to serve the proposed dwelling by utilizing a septic system and public water





Memo to Berkeley Township Zoning Board
Our File: PBAZ0509.02
August 3, 2010
Page 2 of 3

3. The applicant should address the following grading deficiencies:
 - We recommend that the applicant eliminate the low point created at the northwestern property corner.
 - The applicant should provide a minimum 2% grade in all lawn areas, where possible. The swale along the northern property line directed to the rear yard inlet is graded at less than 0.50%. In addition, the grades indicated along the swale appear incorrect.
 - It appears that the proposed retaining wall located along the southern property line will block the run-off from the north side of existing Lot 7 and 9. This should be addressed.
 - The high point spot elevations on the northern property line in the front yard appear to be incorrect.
4. The applicant should provide sizing calculations to verify that the proposed drywells and recharge pipe will have adequate capacity. The pipe size and stone trench size should be noted on the plans.
5. The applicant is proposing to install a 2' to 3'+/- high retaining wall along the southern property line which will run parallel to the proposed driveway. For safety concerns, this type of drop-off adjacent to a driveway is not recommended.
6. It appears that the proposed driveway will not be aligned with the proposed garage, making the garage unusable by vehicles. This should be addressed.
7. As indicated above, the entire lot is wooded. The applicant is proposing to clear the entire lot and is therefore requesting a waiver from section 03-25-OAB of the Township ordinance which requires the applicant to submit to the Zoning Officer a plan to clear no more than 50% of the side and rear yard setbacks for the zone. The applicant should provide testimony to the Board regarding the need for this waiver request.
8. The applicant should indicate on the plans the existing water main location, size and type.
9. Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a bulk variance request if:
 - c.(1) where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.
 - c.(2) where in an application or appeal relating to a specific piece of property the purposes of this act...would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment

It has to be determined whether the property in question meets any or all of the reasons established in the MLUL to permit the granting of the variance and whether the enforcement of the Berkeley Township General Ordinances will cause undue hardship to the property owner.
10. The applicant should provide testimony to satisfy both the positive and negative criteria of the Municipal Land Use Law, such that:
 - a. The proposed use is particularly suited to the particular property.
 - b. There are special reasons that allow a departure from the zoning regulations in this particular case. The granting of a variance must be shown to implement one or more of the purposes of the MLUL 40:55D-2.
 - c. The variance can be granted without substantial detriment to the public good.



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Memo to Berkeley Township Zoning Board
Our File: PBAZ0509.02
August 3, 2010
Page 3 of 3

- d. The variance will not substantially impair the intent and purpose of the zoning plan and ordinance.

C. MISCELLANEOUS

1. Should the Zoning Board of Adjustment grant the relief requested by the applicant, approval of this application should be conditioned upon the following:
 - a. The Applicant resubmitting the following for review by the Zoning Board of Adjustment Engineer:
 - i. A plan which includes those items covered above and discussed at the Board meeting.
 - ii. Proof of submission to the following agencies indicating service can be provided to the location:
 - a. US Postal Service
 - b. Police Traffic Safety
 - c. Berkeley Township Public Works Department
 - d. Bureau of Fire Prevention
 - b. The Applicant certifying to the following:
 - i. The proposed structure should not encroach into existing easements (i.e. shade tree, utility, drainage, etc) without proper consent from the Township.
 - ii. The proposed grading will not impact adjacent property and that the plan as submitted is a true and accurate representation of the existing and proposed improvements on the site
 - iii. Payment all outstanding professional review fees of the Board and the Township
 - c. The Applicant providing the following to the Building Department at time of application for a building permit:
 - i. The applicant submitting for a grading permit in accordance with Section 11-1.5.
 - ii. The applicant submitting architectural plans of the proposed dwelling, to show compliance with building codes.
 - iii. The applicant submitting a Tree Removal/Replacement Plan in accordance with Ordinance 03-25-0AB, unless waiver request is granted by the Board.
 - iv. Proof of approval and/or waivers from all agencies having jurisdiction including:

- | | |
|--|--|
| <input type="checkbox"/> NJDEP Wetlands | <input type="checkbox"/> NJDEP Tidelands |
| <input type="checkbox"/> Waterfront development | <input type="checkbox"/> Flood Plain Management |
| <input type="checkbox"/> CAFRA | <input checked="" type="checkbox"/> Ocean County Soil Conservation |
| <input checked="" type="checkbox"/> Ocean County Board of Health | <input checked="" type="checkbox"/> Ocean County Planning Board |
| <input type="checkbox"/> Berkeley Twp Sewerage Authority | <input checked="" type="checkbox"/> Berkeley Twp Municipal Utility Authority |
| <input type="checkbox"/> Aqua Water Company | <input type="checkbox"/> Pinelands Area |

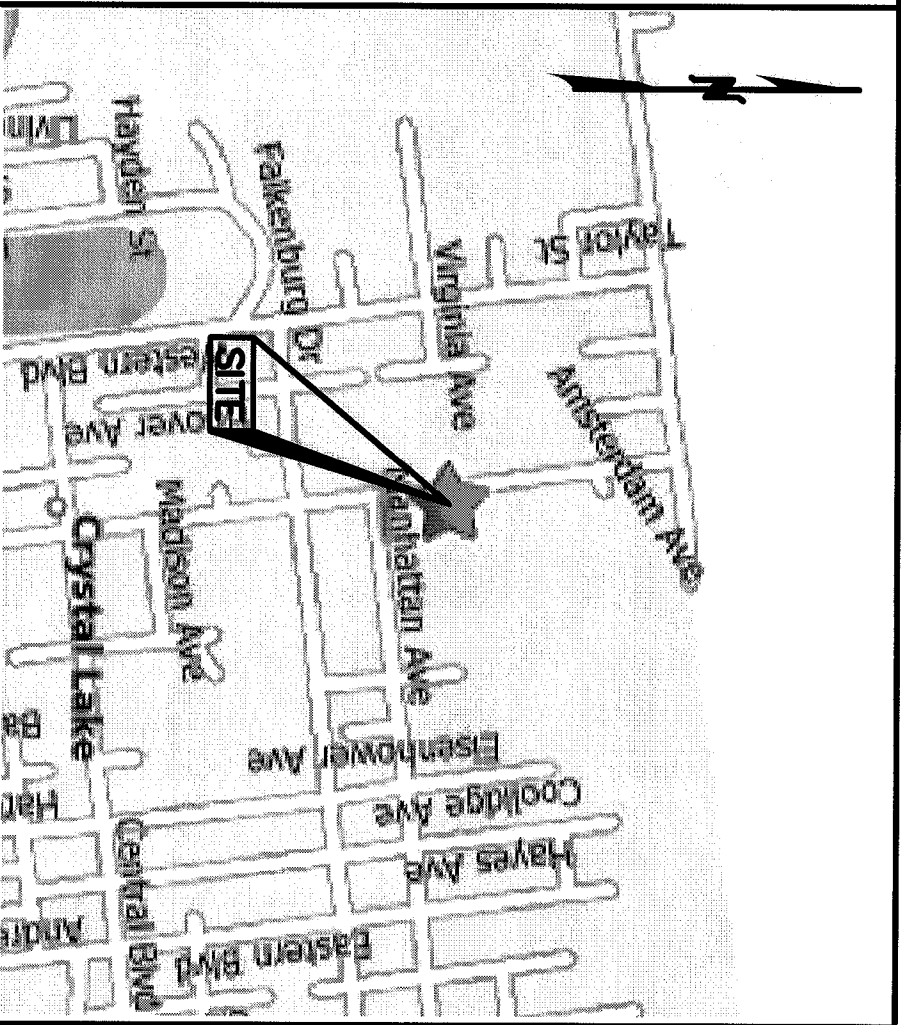
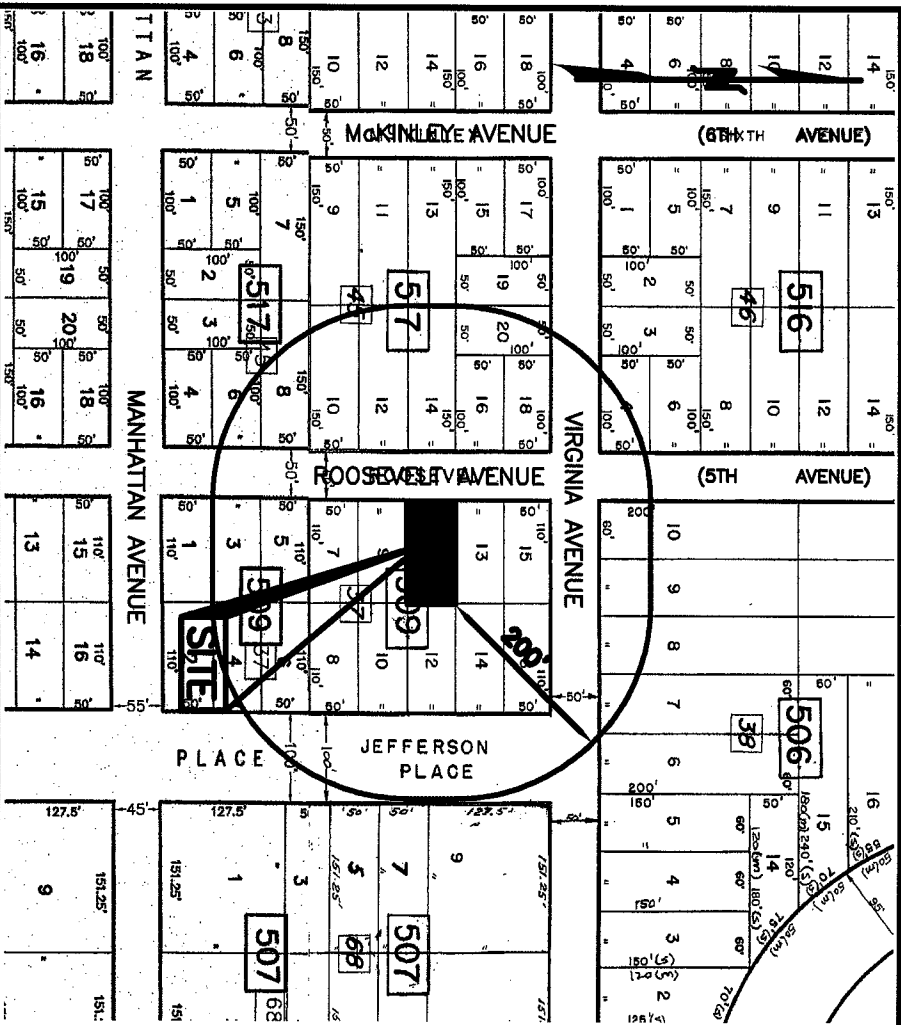
The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board

Should you have any questions regarding this matter, please do not hesitate to contact this office.

RJR/rr

cc: Board Attorney
Jeffrey Jerman
Nelke, Constantine & Associates, Inc.











JOHN H. ALLGAIR, 1983-01
DAVID J. SAMUEL, P.E., P.P.
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BEHRAM TURAN, P.E.

MEMO TO: Berkeley Township Zoning Board of Adjustment

FROM: Robert J. Russo, P.E., P.P., C.M.E.,
Office of the Zoning Board of Adjustment Engineer and Planner

DATE: September 20, 2010

RE: **Barton - Amended – Review #1**
Application: Remove and Replace SFD – Use and Bulk Variances
Block: 1694, Lot 66
Fronting on: 12 Second Lane
Zoning District: BR – Beachfront Residential
Plan: Architectural Plans, prepared by Tekton Enterprises Inc., Dated 11.10.08,
Revised 06.15.10
Plot Plan w/Grading, prepare by Schlatmann Engineering Assoc, LLC
Dated 01.08.09, Revised 07.09.10
BOA#: 08-5258
Our File No.: PBAZ1694.08/ 600.02

In accordance with your request, our office has reviewed the following variance application submitted for the above referenced property. The following comments are offered with regard to the same:

A. PROJECT OVERVIEW

1. The denial states that the "applicant proposes to replace a non-conforming SFD with a non-conforming SFD (which is only allowed in the event of a partial destruction by fire or other natural disaster), that will increase the width of the building which is not allowed in the BR-Zone".
2. BR-Beach Residential Zone Requirements per Section 35-96.9b.2: All dwellings which front on a lane and do not maintain any frontage on the Ocean shall be in accordance with the following standards:
 - a. The enclosed floor area of a dwelling may be extended from the rear wall of the structure a distance of not more than twelve (12) feet from the present rear wall and the width not greater than the dimension of the present sidewall. The combination of the addition and deck shall not violate the minimum distance in the rear yard as set forth in section (h) below. **The applicant is proposing to expand the width of the present structure from 15.2' to 18' which will require a variance.**
 - b. An outside shower area of four feet by four feet shall be permitted off the rear of an existing dwelling. Said shower area may be constructed off the side of a dwelling provided the rear wall of the proposed shower area is aligned with the rear of the dwelling.
 - c. No extension, expansion or deck shall be permitted in the side yards except as per subsection 35-96.9b, 2(b). **As noted in (a) above, the applicant is proposing to expand the width of the present structure from 15.2' to 18' into the side yard which will require a variance.**
 - d. A ground level platform or sitting area may be added to the front of a dwelling. Said area shall not exceed three feet by the width of the dwelling and shall not be enclosed.
 - e. In no instance shall the height of any structure be increased above fourteen (14) feet (except to accommodate required base flood elevations and in that situation, the height of the dwelling space shall not be increased above fourteen (14) feet) nor shall any second story enclosed living space or storage space be permitted. **The applicant is proposing a mean**





Memo to Berkeley Township Zoning Board
Our File: PBAZ1694.08/600.02
September 20, 2010
Page 2 of 3

height for the proposed structure of 12.96' based on the architectural drawings. However, there appears to be a discrepancy between the architectural drawings and the plot plan with regard to the first floor elevation and the actually building height. It appears that the architectural drawings indicate the building height and elevation of the first floor to be 13.92' and 10', respectively while the plot plan appears to indicate 13.14' and 10.5', respectively. The applicant should clarify same. In either case, it appears that the mean height is less than the maximum allowed 14'.

- f. A shed may be permitted, however shall not exceed 32 SF (4'x4'x8'). In no instance shall a shed exceed the height of any residential structure.
- g. No fence shall exceed four (4) feet in height.
- h. A minimum distance of six (6) feet shall be maintained in the rear yard area between any expansion or deck and the rear wall or deck or another dwelling. In no instance shall a rear expansion, rear deck, outdoor shower area or shed be permitted to encroach in to the minimum six (6) feet wide rear yard separation area, the alleyway. **It appears that the applicant is proposing to construct the rear wall of the dwelling to with in approximately 5.75' of the adjacent dwellings rear deck. The applicant should verify and dimension this distance on the plan. If same is less than 6', a variance will be require. It should be noted that the existing deck is less than one (1) foot from the adjacent dwellings rear deck.**

B. GENERAL REVIEW COMMENTS

1. The applicant should provide a description of the proposed dwelling.
2. Testimony is required to demonstrate that the applicant satisfies the positive and negative criteria of the Municipal Land Use Law for the granting of the Variance for the construction of a non-conforming use. Consequently, the applicant must demonstrate the following:
 - a. Positive Criteria
 - i. That the site is particularly suited to the use.
 - ii. There are special reasons that allow a departure from the zoning regulations in this particular case. In general, to show special reasons, the grant of a variance must be shown to implement one or more of the purposes of the Municipal Land Use Law (NJSA 40:55D-2).
 - b. Negative Criteria
 - i. That the variance can be granted without substantial detriment to the public good. This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.
 - ii. That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance
3. Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a bulk variance request if:
 - c.(1) where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to



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Memo to Berkeley Township Zoning Board
Our File: PBAZ1694.08/600.02
September 20, 2010
Page 3 of 3

article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.

- c.(2) where in an application or appeal relating to a specific piece of property the purposes of this act...would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment...

It has to be determined whether the property in question meets any or all of the reasons established in the MLUL to permit the granting of the variance and whether the enforcement of the Berkeley Township General Ordinances will cause undue hardship to the property owner.

C. MISCELLANEOUS

1. Should the Zoning Board of Adjustment grant the relief requested by the applicant, approval of this application should be conditioned upon the following:
 - a. The Applicant certifying to the following:
 - i. The proposed structure should not encroach into existing easements (i.e. shade tree, utility, drainage, etc) without proper consent from the Township.
 - ii. The proposed grading if any, will not impact adjacent property and that the plan as submitted is a true and accurate representation of the existing and proposed improvements on the site.
 - iii. Payment of all outstanding professional review fees of the Board and the Township.
 - b. The Applicant providing the following to the Building Department at time of application for a building permit:
 - i. The applicant submitting for a grading permit in accordance with Section 11-1.5.
 - ii. The applicant submitting architectural plans of the proposed dwelling, to show compliance with building codes.
 - iii. Proof of approval and/or waivers from all agencies having jurisdiction.

The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board

Should you have any questions regarding this matter, please do not hesitate to contact this office.

RJR/rr

cc: Edward Liston, Esq. - Board Attorney
Richard Barton - Applicant
Michael R. Pichowicz, Esq. - Applicant's Attorney
Kenneth F.X Schlatmann, P.E., P.P.
Joseph M. Tinley Jr., Architect



SITE

