

**TOWNSHIP OF BERKELEY
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
APRIL 11, 2012
6:30 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, 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. Edward & Ginger Greco BOA # 11-5390

Variance requested	Bulk – Setbacks to bulkhead
Project	Deck & Swim Spa
Block 1218.02	Lot 33
Address: 5 Peaksail Dr.	Zone: R-60 Residential

Denial reads: Install a swim spa 10 ft. from bulkhead; whereas 15 ft. is required and a 40 ft. x 20 ft. deck 3 ft. from the bulkhead; whereas 5 ft. is required.

2. Keith & Tania McShaffrey BOA # 11-5393

Variance requested	Front setback for deck & fence height in front yard
Project:	2 level deck & screening fence
Block 492	Lots 15, 17, 19
Address: 370 Coolidge Ave.	Zone: R-125

Denial reads: Install 6 ft. high fence between public street and a building line and also a 2 level deck 25 ft. from front property line; whereas 35 ft. is required.

3. Gerard & Joann Coppola BOA # 11-5391

Variance requested:	Fence height in front yard
Project	Install fence & arbor in front yard on a corner lot.
Block 1108.12	Lot 23
Address: 50 Spinnaker Ct.	Zone: R-60 Residential

Denial reads: Installed a 5 ft. fence between building line and the public street; whereas 4 ft. is allowed.

4. The Cove

BOA # 11-5380

Variance requested

Use Variance

Project

Construct 21 single family homes & Marina

Block 1032

Lots 29 – 34.01

Block 1033

Lots 37.01 – 43

Address:

Zone R-100

Denial reads:

Applicant appeared before the Board previously requesting numerous Waivers which were not accepted. Applicant has revised project to single family homes from Townhouses.

G. RESOLUTIONS

H. ADJOURNMENT



Ernst, Ernst Lissenden

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Certificate of Authorization 24GA27927500
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Carl P. Werner, L.S., P.P.
Harold Mathis, Jr., L.S., P.P.

March 6, 2012

Patricia Osborne, Board Secretary
Berkeley Township Zoning Board of Adjustment
Pinewald-Keswick Road
P.O. Box B
Bayville, NJ 08721

Re: **Edward & Ginger Greco**
Application: Variance for Deck and Spa to Bulkhead
BOA #11-5390
Block 1218.02, Lot 33
Zone: R-60 Residential Zone
EE&L Project No. 12B4533-7G02

Dear Ms. Osborne:

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:

The denial letter issued November 30, 2011 by the Zoning Official states applicant proposes to install a swim spa 10 ft. from the bulkhead whereas 15 ft. is required and a 40 ft. x 20 ft. 3 ft. deck 3 ft. from the bulkhead whereas 5 ft. is required in the R-60 Zone (Ordinance No. 35-96.3a2).

A. Completeness

1. Based upon our review, we recommend that this **application be deemed complete** subject to the Applicant complying with all applicable notification requirements as set forth in the Berkeley Township Land Use Ordinance and the Municipal Land Use Law. As such, this application is being placed on the Berkeley Zoning Board of Adjustment's April 11, 2012 meeting agenda.
2. Notice to property owners and the newspaper (published) must be provided no later than 10 days prior to the meeting date and all proofs of service must be in the Municipal Planning and Zoning office no later than 5 days prior to the meeting. Should you have any questions with regard to noticing requirements, contact the Board office at 732-244-7400.
3. It is noted that the applicant has incorrectly checked some items N/A (not applicable to the application) on the Checklist Application for "C Variance" Section II General Information. Upon review however, the required information is correctly provided in the application and the items become a non-issue.

B. General Comments

- The property is located north side of Peaksail Drive approximately 120 feet west of Bowsprit Drive and is situated on a bulkheaded lagoon.
- Property is located within the R-60 Residential Zone and comprises an area of 6,000 s.f.
- Property contains an existing 2 story frame dwelling with a concrete driveway and sidewalk. The rear yard is currently covered with decorative stone.
- The site is located in the AE Flood Zone with a base flood elevation of 6.0.
- Applicant proposes to construct a rear yard 40 ft. x. 20 ft. upper deck (floor el. = 8.89) with a spa (el. 8.89) and a lower ground deck (floor el. = 5.56).

Re: **Edward & Ginger Greco**
Application: Variance for Deck and Spa to Bulkhead
BOA #11-5390
Block 1218.02, Lot 33
Zone: R-60 Residential Zone
EE&L Project No. 12B4533-7G02

Page 2 of 2



C. Variances Requested and Items of Discussion

1. A bulkhead minimum distance setback variance is required as the proposed upper deck is 2.7 ft. from the bulkhead; whereas 5.0 ft. is required. The address should address why only 5 ft. can be achieved.
2. A bulkhead minimum distance setback variance is required as the proposed spa is 8.6 ft.; whereas 15 ft. is required.
3. Applicant must provide testimony and proofs supporting the granting of the variances.
4. Plan submitted in support of the Variance is a "Plot Plan – Lot 33 – Block 1218.02", prepared by JCR Engineering, LLC, dated January 17, 2011 consisting of 1 sheet, signed by Robert A. Woodcock, P.E. & P.P.
5. The Board must determine that either the property in question meets any or all of the conditions established above, and/or that the strict adherence to the standards of the Berkeley Township Land Development Ordinance would cause undue hardship to the property owner, and also be satisfied that the granting of the variance will not cause any detriment to the public good, or the Zoning Plan (Master Plan).

D. Conditions and Recommendations

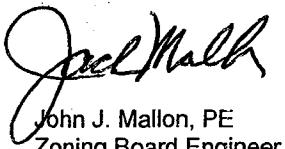
Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The Applicant shall obtain any and all agency approvals, including but not limited to, CAFRA, NJDEP, Building Department, Fire Department, Health Department, and Engineering Departments, etc., if required.
2. The Applicant certifying that the proposed deck will not encroach into existing easements (i.e., shade tree, utility, drainage, etc.) without proper consent from the Township, or other party involved, if any.
3. The Applicant shall submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant shall provide all required plans necessary to show compliance with all required Building Codes and Ordinances, to the Building Department at the time of the permit application.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please do not hesitate to call our office.

Very truly yours,

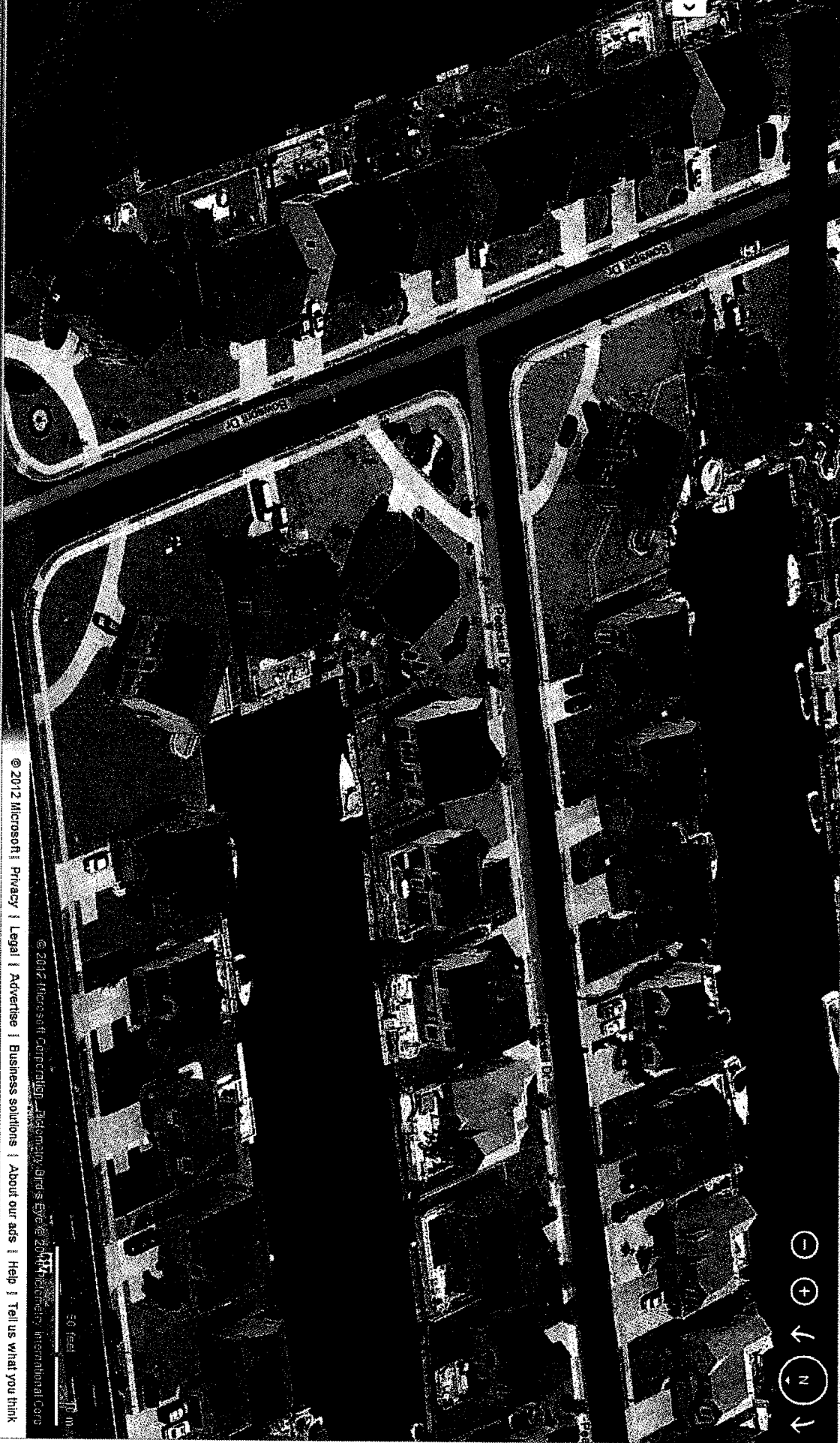

John J. Mallon, PE
Zoning Board Engineer

Enclosure: Aerial Photograph

JJM/jet

cc Anna Wainwright, Board Planner
Alex Pavliv, Board Attorney
Edward & Ginger Greco, Applicants
file

5 peaksail drive berkeley nj



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MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, PP, AICP
Zoning Board Planner

DATE: March 1, 2012

RE: Greco, Edward & Ginger – Planning Review #1
Application: Deck & Swim Spa
Block 1218.02, Lot 33
Address: 5 Peaksail Drive
Zoning District: R-60 Residential Zone
Plan Prepared By: JCR Engineering
Robert Woodcock, P.E., P.P., P.L.S., dated 01/17/11
BOA# 11-5390
Our File: 1506-Z-129

As requested, our office has reviewed the above named variance application and offer the following comments and recommendations:

Zoning Requirements:

R-60 Residential Zone §35-95 & §35-96.3

<u>Principal Bldg</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Requested</u>
Minimum Lot Area	6,000 SF	6,000 SF	6,000 SF	None
Minimum Lot Frontage	60 FT	60 FT	60 FT	None
Front Yard Setback	35 FT	25.4 FT	25.4 FT	Pre-existing Non-conforming
Rear Yard Setback Structure	20 FT	22.5 FT	22.5 FT	None
Side Yard Setback	7 FT	7.9 FT	7.9 FT±	None
Combined side yard setback	18 FT	19.7 FT	19.7 FT	None
Proposed Spa	15 FT	N/A	5.8 FT*	*Variance Required
Deck above 18"	20 FT	N/A	2.7 FT*	*Variance Required

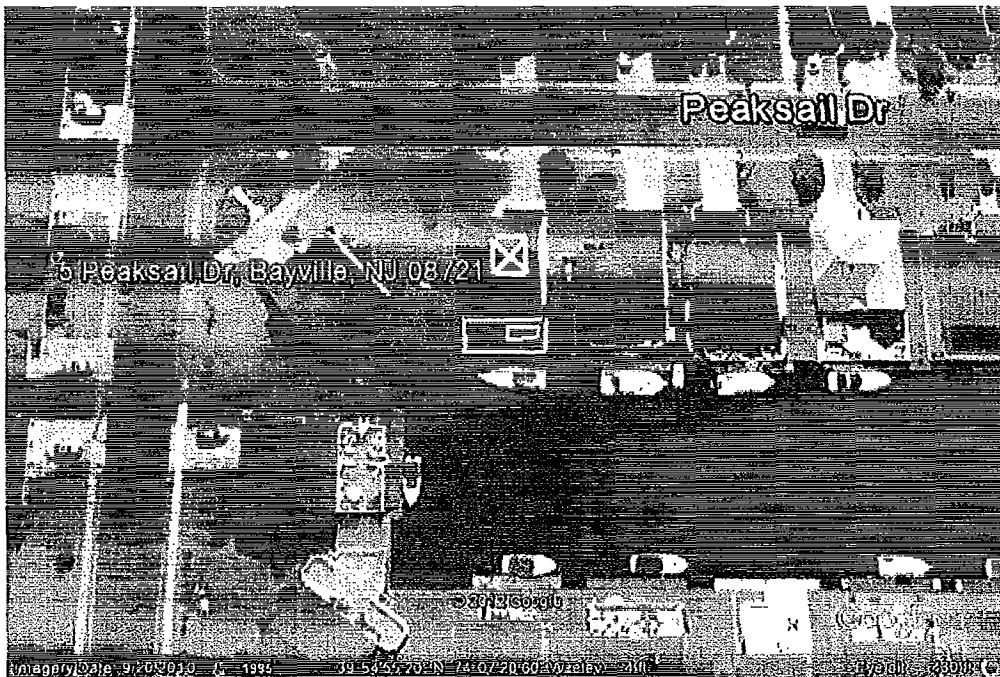
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A. PROJECT OVERVIEW

The denial states: Applicant proposes to install a swim spa 10' from the bulkhead where 15' is required and a 40' X 20' X 3' deck 3 feet from the bulkhead where 5 feet is required in the R-60 Zone.

B. GENERAL REVIEW COMMENTS

1. The applicant is proposing to construct a 40' X 20' deck 2.7' from the bulkhead which is above the 18" height maximum allowed when encroaching into a "yard setback" area. In this case the applicant is also proposing a 14' 7" X 8' 1" swim spa on top of the deck and a 4' high Jerith Fence along the upper deck. Both the deck and the spa require variances for setbacks (as described above). The applicant is also proposing a new ground level lower deck which does not require any variances.
2. The applicant should provide some testimony regarding any possible way that variances can be lessened or eliminated. The applicant should describe rear yard conditions on either side of the property. In this case the proposal is similar to the conditions on the adjacent property to the west, and some distance from the adjacent structures on the lot to the east (which recently received a variance to construct their deck within 5 feet of the bulkhead).



3. The applicant must provide the appropriate testimony and proofs for the granting of variances 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.

The Board must determine that either the property in question meets any or all of the conditions established above, and/or that the strict adherence to the standards of the Berkeley Township Land Development Ordinance would cause undue hardship to the property owner, and also be satisfied that the granting of the variance will not cause any detriment to the public good, or the Zoning Plan (Master Plan).

C. CONDITIONS AND RECOMMENDATIONS

Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The Applicant shall obtain any and all required agency approvals, including but not limited to, CAFRA, NJDEP, Building Department, Fire Department, Health Department, Township Building and Engineering Departments, etc., if required.
2. The Applicant certifying that the proposed deck will not encroach into existing easements (i.e., shade tree, utility, drainage, etc.) without proper consent from the Township, or other party involved if any.
3. The Applicant shall submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant shall provide all required plans necessary to show compliance with all required Building Codes, to the Building Department at the time of the permit application.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please don't hesitate to call our office at 732-286-9220.

God Bless America

REMINGTON, VERNICK & VENA ENGINEERS

EJP/ARW/ktr

cc: J. Mallon, PE – Board Engineer
A. Pavliv, Esq. – Board Attorney
Edward & Ginger Greco – Applicant



Ernst, Ernst Lissenden

A New Jersey Corporation

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March 6, 2012

Patricia Osborne, Board Secretary
Berkeley Township Zoning Board of Adjustment
Pinewald-Keswick Road
P.O. Box B
Bayville, NJ 08721

Re: Keith & Tania McShaffrey
Application: Variance for Deck and 6 Ft. Fence
in Front Yard
BOA #11-5393
Block 492, Lots 15, 17 & 19
Zone: R-125 Zone
EE&L Project No. 12B4533-7M03

Dear Ms. Osborne:

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

The denial letter issued November 28, 2011 by the Zoning Official states applicant proposes to install a 6 ft. high fence between a public street and a building line and also a 2 level deck 25 ft. from front property line; whereas 35 ft. is required (35-95.1 & 11-5.1-7).

A. Completeness

1. Based upon our review, we recommend that this application be deemed complete subject to the Applicant complying with all applicable notification requirements as set forth in the Berkeley Township Land Use Ordinance and the Municipal Land Use Law. As such, this application is being placed on the Berkeley Zoning Board of Adjustment's April 11, 2012 meeting agenda.
2. Notice to property owners and the newspaper (published) must be provided no later than 10 days prior to the meeting date and all proofs of service must be in the Municipal Planning and Zoning office no later than 5 days prior to the meeting. Should you have any questions with regard to noticing requirements, contact the Board office at 732-244-7400.
3. It is noted that the applicant has not checked some items "yes" and N/A (not applicable to the application) on the Checklist Application for "C Variance" Sections. **Upon review however, the required information is correctly provided in the application and the items become a non-issue.**

B. General Comments

- Property is a corner lot located at the intersection of Coolidge and Lexington Avenues.
- Property is located in the R-125 Zone and comprises an area of 15,000 s.f. (0.344 acres).
- Property contains an existing one story frame dwelling with an asphalt driveway, a frame shed, a frame deck and a chain link fence.
- Applicant proposes to construct a 2 level deck around a portion of the existing above ground pool and a 6 ft. high white vinyl fence along the property line with a portion (approx. 80 ft.) in the front yard along Lexington Avenue right-of-way.

C. Variances Requested and Items of Discussion

1. A front yard setback variance is required for the deck as the proposed setback is 25 ft.; whereas 35 ft. is required.

Re: Keith & Tania McShaffrey
Application: Variance for Deck and 6 Ft. Fence
in Front Yard
BOA #11-5393
Block 492, Lots 15, 17 & 19
Zone: R-125 Zone
EE&L Project No. 12B4533-7M03

Page 2 of 2



2. A Variance is required for the proposed 6 ft. high solid white vinyl fence between the building line and Lexington Avenue. The proposed fence does not obstruct the intersection site triangle.
3. The plan submitted in support of the variance application is a copy of the Survey map prepared by Bernard Collins, P.L.S., dated February 1, 2012 on which the applicant has sketched the proposed construction. Proposed locations of the construction have been scaled from the copy and are approximately dimensioned.
4. The applicant must provide testimony and proof supporting the granting of the variances.
 - a. Applicant should provide testimony regarding:
 1. Distance of fence from property (street frontage line) and how this proposal will not be a detriment to the visual landscape.
 2. Status of existing fence (to remain or be removed).
 3. The removal of trees, if any.
 4. Applicant should provide testimony regarding deck dimensions and location from property lines.
 - b. The applicant should provide a true and accurate representation of the proposed location of the fence and deck.
5. The Board must determine that either the property in question meets any or all of the conditions established above, and/or that the strict adherence to the standards of the Berkeley Township Land Development Ordinance would cause undue hardship to the property owner, and also be satisfied that the granting of the variance will not cause any detriment to the public good, or the Zoning Plan (Master Plan).

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please do not hesitate to call our office.

Very truly yours,

John J. Mallon, PE
Zoning Board Engineer

Enclosure: Aerial Photograph

JJM/jet

cc Anna Wainwright, Board Planner
Alex Pavliv, Board Attorney
Keith & Tania McShaffrey, Applicants
file



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MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, P.P., A.I.C.P.
Zoning Board Planner

DATE: March 21, 2012

RE: McShaffrey, Keith & Tania
PLANNING REVIEW-#1
Application: Fence & Deck
Block 492 Lot 15,17,19
Address: 370 Coolidge Ave.
Zoning District: R-125 Residential
Plan Title: Map of Survey Tax Lots 15,17,19, Block 492
Prepared by: Bernard Collins, P.L.S., , dated 2-1-12.
BOA#: 11-5393
Our File: 1506-Z-131

As requested, our office has reviewed the above named variance application and offer the following comments and recommendations:

Zoning Requirements:

R-125 Residential Zone - §35-95 & §35-96.2

<u>Principal Bldg</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Required</u>
Minimum Lot Area	12,500 SF	15,000 SF	15,000 SF	None
Minimum Lot Frontage	100 FT	100/150 FT	100/150 FT	None
Front Yard Setback	35 FT	38/35FT	38/35 FT	None
Rear Yard Setback Structure	30 FT	> 30 FT	> 30 FT	None
Rear Yard Setback Accessory	7 FT	>7 FT	>7 FT	None
Front Yard Setback Deck	35 FT	N/A	25 FT*	<u>Variance Required</u>
Front Yard Fence 6'	Not Permitted	N/A	0 FT*	<u>Variance Required</u>

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A. PROJECT OVERVIEW

The denial states that the "Applicant proposes to install a six foot high fence between the public street and a building line and also a 2 level deck 25 feet from a front property line where 25 feet is required.

It appears that the Applicant is proposing to install a six foot (6') privacy fence along their property line, between Lexington Avenue and their building setback which is 35.30 feet. The ordinance (§11-5.2(a)(1)) does not permit a fence any higher than 48 inches. In addition, the Applicant is proposing a two-level deck around an existing above ground pool, which is located in the rear yard, however, the deck will extend into the front yard setback by 10 feet (25' from the property line). The Applicant is located on a corner lot and effectively has two front yards, therefore the variance is required. It should be noted that the property directly across the street does not have a fence in this area, but has planted shrubs and trees for privacy. The plan cannot be accurately scaled to confirm the location of the deck. The Applicant should understand that their request is for a 25 foot setback from the property line, which is approximately ten (10) feet from the street line. Additionally, the Applicant should specify if the fence will loop along the rear property line which would also require a variance (not shown on the plan). The Applicant should provide testimony which satisfies the Board that they cannot install the decking along the opposite side of the pool, which would not require a variance.



B. GENERAL REVIEW COMMENTS

1. 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.

The Board must determine that either the property in question meets any or all of the conditions established above, and/or that the strict adherence to the standards of the Berkeley Township Land Development Ordinance would cause undue hardship to the property owner. The Board must also be satisfied that the granting of the variance will not cause any detriment to the public good, or the Zoning Plan (Master Plan).

C. CONDITIONS AND RECOMMENDATIONS

Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The Applicant certifying that the proposed addition will not encroach into existing easements (i.e., shade tree, utility, drainage, etc.) without proper consent from the Township.
2. The Applicant provides adequate drainage and runoff testimony and/or plans which verify that there will be no drainage impact to adjacent property owners.
3. The Applicant is to submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant provide all required plans necessary to show compliance with all required Building Codes, to the Building Department at the time of the permit application.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please don't hesitate to call our office at 732-286-9220.

God Bless America

REMINGTON, VERNICK & VENA ENGINEERS

EJP/ARW/ktr

cc: J. Mallon, P.E. – Board Engineer
A. Pavliv, Esq. – Board Attorney
Keith & Tania McShaffrey – Applicant



Ernst, Ernst Lissenden

A New Jersey Corporation

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March 8, 2012

Patricia Osborne, Board Secretary
Berkeley Township Zoning Board of Adjustment
Pinewald-Keswick Road
P.O. Box B
Bayville, NJ 08721

Re: Gerard & Joann Coppola
Application: Variance to Install 5 Foot Fence Between
Building Line & Public Street
BOA #11-5391
Block 1108.12, Lot 23
Corner Lot – Spinnaker Ct. & Veeder Lane
Zone: R-60 Residential Zone
EE & L Project No. 12B4533-7C02

Dear Ms. Osborne:

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:

The Denial letter issued December 5, 2011 by the Zoning Official states applicant is requesting a Variance for a 5 foot high fence installed between building line and a public street; whereas 4 feet is the maximum allowed (Section 11-5.1-7).

A. Completeness

1. Based upon our review, we recommend that this application be deemed complete subject to the Applicant complying with all applicable notification requirements as set forth in the Berkeley Township Land Use Ordinance and the Municipal Land Use Law. As such, this application is being placed on the Berkeley Zoning Board of Adjustment's April 11, 2012 meeting agenda.
2. Notice to property owners and the newspaper (published) must be provided no later than 10 days prior to the meeting date and all proofs of service must be in the Municipal Planning and Zoning office no later than 5 days prior to the meeting. Should you have any questions with regard to noticing requirements, contact the Board office at 732-244-7400.
3. It is noted that the applicant has checked most items as "yes" on the Checklist Application for "C Variance", whereas most of the items should have been checked as N/A (not applicable to the application), upon review the necessary information is provided in the application and the items become a non-issue.

B. General Comments

- The property is a corner lot located at the intersection of Spinnaker Court and Veeder Lane.
- Property is located in the R-60 Zone and is located on a lagoon.
- Property contains an existing 2-story frame dwelling, paved driveway, sidewalk, deck, dock and has a 5 foot P.V.C. fence and arbor located in the front yard.
- Property located in Flood Zone "X" (shaded) "other flood areas". (areas of 0.2% annual chance flood).
- Applicant has already constructed the five foot fence and arbor in the front yard area and requires a Variance to "legalize" same.

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C. Variances Requested and Items of Discussion

1. Variance is requested for a 5 foot fence and arbor located between the building line and a public street (Spinnaker Court). It is noted that the 5 ft. fence has a 12"± lattice type (open) top; whereas 4 ft height is permitted.
2. Applicant must provide testimony and proofs supporting the granting of the Variance.
3. Plan submitted in support of the Variance is a copy of the property survey dated September 12, 1987 with the fence sketched on the map.
4. Applicant should clarify the following:
 - a. Depth/height of fence on side property line;
 - b. Arbor/entrance height;
 - c. Fence bottom height above grade;
 - d. If any drainage/swales affected;
 - e. Is any other fencing to be constructed.
5. The Board must determine that either the property in question meets any or all of the conditions established above, and/or that the strict adherence to the standards of the Berkeley Township Land Development Ordinance would cause undue hardship to the property owner, and also be satisfied that the granting of the variance will not cause any detriment to the public good, or the Zoning Plan (Master Plan).

D. Conditions and Recommendations

Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The Applicant shall obtain any and all agency approvals, including but not limited to, CAFRA, NJDEP, Building Department, Fire Department, Health Department, and Engineering Departments, etc., if required.
2. The Applicant certifying that the fence will not encroach into existing easements (i.e., shade tree, utility, drainage, etc.) without proper consent from the Township, or other party involved, if any.
3. The Applicant shall submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant shall provide all required plans necessary to show compliance with all required Building Codes and Ordinances, to the Building Department at the time of the permit application.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please do not hesitate to call our office.

Very truly yours,

John J. Mallon, PE
Zoning Board Engineer

JJM/jet

cc Anna Wainwright, Board Planner
Alex Pavliv, Board Attorney
Gerard & Joann Coppola, Applicants
file

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MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, P.P., A.I.C.P.
Zoning Board Planner *AW*

DATE: March 21, 2012

RE: Coppola, Gerard & Joann
PLANNING REVIEW-#1
Application: Fence
Block 1108.12 Lot 23
Address: 50 Spinnaker Court
Zoning District: R-60 Residential
Plan Title: Map of Survey Tax Lots 23, Block 83
Prepared by: Thomas Murphy, P.L.S., dated 9-12-87
BOA#: 11-5391
Our File: 1506-Z-130

As requested, our office has reviewed the above named variance application and offer the following comments and recommendations:

Zoning Requirements:

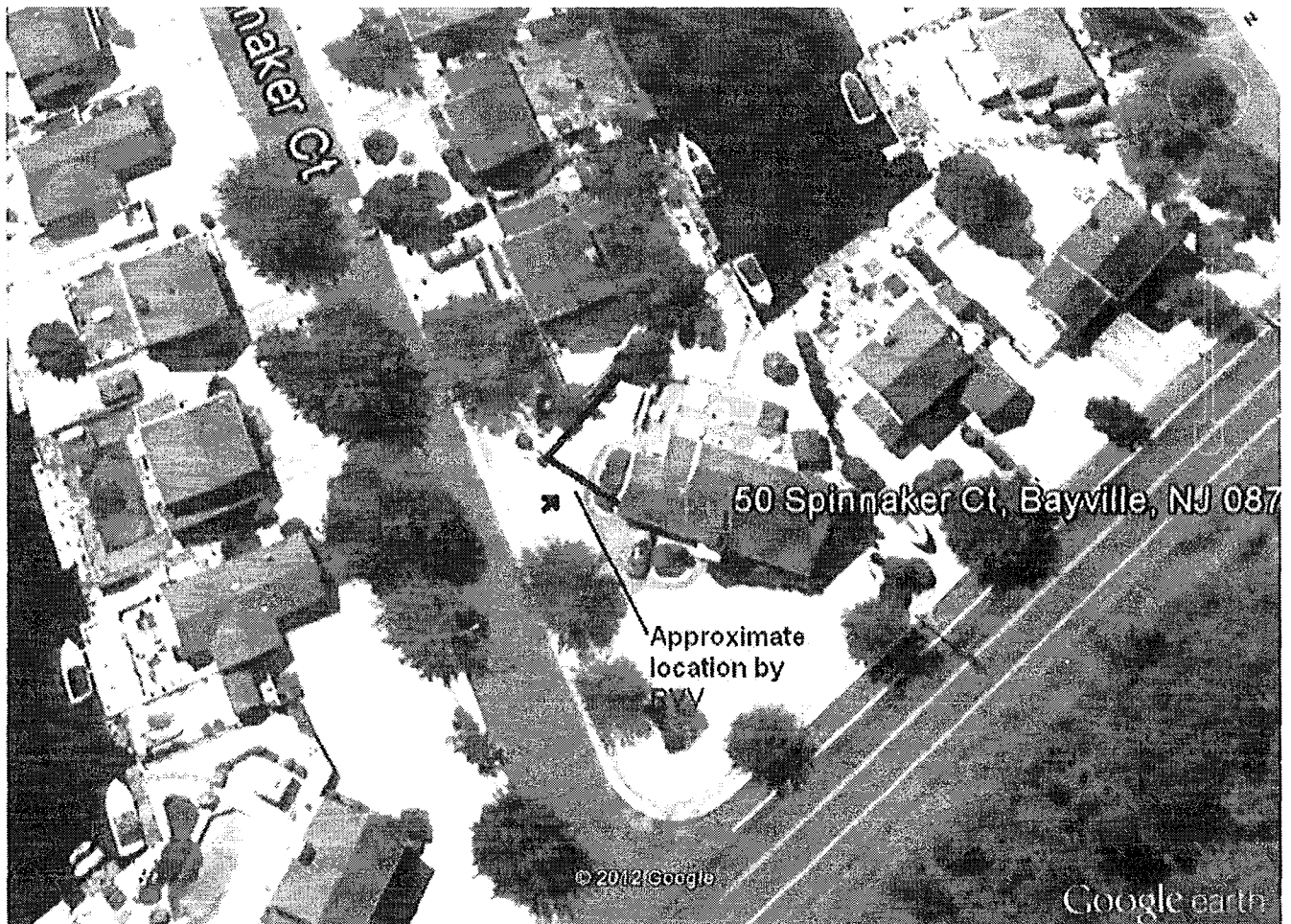
R-60 Residential Zone - §35-95 & §11-5.2(a)(1)

The Applicant's property is located in the R-60 Residential Zone which requires a 35 foot setback for the principal structure. The existing home is approximately 29 feet from the closest property line on Spinnaker Court. The Applicant effectively has two front yards. In the R-60 Zone there is a provision for front yard setbacks of 25 feet if it is shown that lot is provided with public water and sewer and the structure is not less than the average setback of the existing structures within the block face. It difficult to say which homes were constructed first, however, this home does appear to be a similar setback from those homes adjacent and on the block. The Applicant's home is located on an angle across the center of the lot. The Applicant has constructed a 5' high vinyl fence (one foot off of the grade) with an attached arbor/gate. Ordinance §11-5.2(a)(1) prohibits the construction of a fence exceeding four (4) feet between the building line and the public street. The Applicant is requesting a waiver from this requirement (§35-46.5).

A. Zoning Denial

The denial states that the "Applicant is requesting a variance for a 5 foot high fence installed between the building line and a public street where 4 feet is the max allowed."

A five-six (5-6') privacy fence is installed along Spinnaker Court, from approximately 31 feet at the house to 14' 6" from the southern property line. The Applicant is located on a corner lot and effectively has two front yards, therefore the variance is required. The Applicant is requesting that the fence and arbor be permitted to remain.



B. GENERAL REVIEW COMMENTS

1. 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.

The Board must determine that either the property in question meets any or all of the conditions established above, and/or that the strict adherence to the standards of the Berkeley Township

Page 3

Land Development Ordinance would cause undue hardship to the property owner. The Board must also be satisfied that the granting of the variance will not cause any detriment to the public good, or the Zoning Plan (Master Plan).

C. CONDITIONS AND RECOMMENDATIONS

Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The Applicant certifying that the proposed addition will not encroach into existing easements (i.e., shade tree, utility, drainage, etc.) without proper consent from the Township.
2. The Applicant provides adequate drainage and runoff testimony and/or plans which verify that there will be no drainage impact to adjacent property owners.
3. The Applicant is to submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant provide all required plans necessary to show compliance with all required Building Codes, to the Building Department at the time of the permit application.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please don't hesitate to call our office at 732-286-9220.

God Bless America

REMINGTON, VERNICK & VENA ENGINEERS

EJP/ARW/ktr

cc: J. Mallon, P.E. – Board Engineer
A. Pavliv, Esq. – Board Attorney
Gerald J. & Joann A. Coppola – Applicant



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Carl P. Werner, L.S., P.P.
Harold Mathis, Jr., L.S., P.P.

March 28, 2012

Patricia Osborne, Board Secretary
Berkeley Township Zoning Board of Adjustment
Pinewald-Keswick Road
P.O. Box B
Bayville, NJ 08721

Re: The Cove on Toms River At Berkeley
Application: Use Variance, Density Variance & Bulk Variances
BOA #11-5380
Block 1032, Lots 29, 30, 31, 33, 34 & 34.01
Block 1033, Lots 37.01, 39, 41 & 43
Block 1035, Lots 53 & 56
Block 1036, Lots 35, 35.01, 36, 55 – 55.04
Zone: R-100 Residential Zone
EE & L Project No. 12B4533-7 C01

Dear Ms. Osborne:

In accordance with your authorization, our office has reviewed revised plans entitled "Variance Plans For The Cove On Toms River At Berkeley Lots 29, 30, 31, 33, 34 And 34.01 in Block 1032, Lots 37.01, 39, 41 and 43 in Block 1033, Lots 53 and 56 in Block 1035, Lots 35, 35.01, 36, 55 thru 55.04 in Block 1036, Township of Berkeley, Ocean County, N.J." consisting of seven (7) sheets, last revised March 14, 2012 prepared by William A. Stevens, P.E., P.P., of Professional Design Services, L.L.C.

I have reviewed the submitted information and offer the following comments:

A. Project Overview

The proposed project is located adjacent to the Barnegat Bay – Toms River Tidal Waters in the R-100 Zone. The applicant is seeking "d" variances for Use and Density and "c" variances for non-compliance with all of the requirements with the exception of building height and floor area within the Zoning Schedule for the R-100 Zone. Since the application is bifurcated, should the Board grant the requested variances, the applicant would be required to return with a completely detailed Subdivision/Site Plan application. It should be noted that CAFRA will regulate how much of the land can be covered by impervious surfaces. The applicant is requesting a variance for lot coverage (building coverage) of 31% which exceeds the maximum of 30% permitted by CAFRA.

The existing area to be developed contains vacant wooded areas with derelict structures and boat storage areas. Most of the site is presently gravel covered lands, along with a beach area and the project fronts on Doyle Drive, Bayview Place, River Terrace and Williams Street which are gravel covered public streets varying in width.

The original proposal was for 25 dwelling units contained in seven three-story townhouses, a marina with 71 boat slips, a dock master building containing a restaurant, store and residence, swimming pool and parking facilities.



The original project has been amended and it is now proposed to construct twenty-one (21) single family residential dwelling units on undersized lots, a marina containing seventy-one (71) boat docking slips, a dock master building containing a restaurant, store and residential dwelling, a parking lot containing twenty-two (22) parking spaces. It is also proposes to pave the gravel public streets to 28 feet in width allowing for parking on one side of the street which is in conformance with R.S.I.S., drainage system, public water and sewer systems are also proposed.

The applicant has satisfied the previous decisions made by the Board and **is complete** for the Board to consider the Use Variance application. The applicant will be scheduled for the **April 11, 2012** hearing date subject to all proper notifications required by law.

B. Variance

Use Variance d(1): For A Principal Use Not Permitted in a Zone

The applicant has applied for a bifurcated application to create 21 lots of which 18 lots are undersized, a marina (a conditionally permitted use) and a building to be used as a store/restaurant with a dock masters residence on the second floor which is not a permitted use within the R-100 Zone.

Density Variance d(5) For More Residential Lots Than What Is Allowed By Ordinance

Based upon the area being subdivided for residential dwelling units twelve (12) (12.7 calculated) lots are allowed; whereas 21 lots are proposed in a zone with the following standards:

Zoning Requirements: R-100 Residential Zone

R-100 Residential Zone, 35-95 & 35-96.2 * Bold = Variance Required

Zone Requirements	Min. Area 10,000 s.f	Min. Frontage 100 ft.	Minimum Setbacks			Combined Side 30 ft.	Min. Floor Area (3 bedroom) 1,250 s.f.	Max. Lot Coverage 25%	Max. Building Hgt. 35 ft.
			Front 35 ft.	Rear 30 ft.	Side 10 ft.				
Block 1032									
Lot 29.01	4,157*	40*	25*	25*	7.5*	15*	1,250	30*	30
Lot 29.02	5,687*	23.67*	25*	25-	6.5*	14.5*	1,250	22	30
Lot 29.03	5,517*	25.1*	25*	25*	6.5*	14.5*	1,250	22.6	30
Lot 29.04	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.05	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.06	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.07	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.08	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.09	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.10	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Lot 29.11	4,000*	40*	25*	25*	7.5*	15*	1,250	31*	30
Block 1033									
Lot 39.01	4,924*	40*	25*	30	7.5*	15*	1,250	25.4*	30



Lot 39.02	4,896*	40*	25*	30	7.4*	15*	1,250	25.5*	30
Lot 39.03	15,261	43.6*	25*	30	7.5*	15*	1,250	8.2	30
Lot 39.04	8,586*	40*	40	30	7.5*	15*	1,250	14.6	30
Lot 39.05	8,593*	40*	52	30	7.5*	15*	1,250	14.5	30
Lot 39.06	13,289	107.8	68	30	7.5*	30	1,250	9.4	30
Lot 39.07	10,000	75*	35	30	10	25*	1,250	25	30
Block 1035									
Lot 53.01	5,750*	100	25*	21*	7.5*	N/A	1,250	21.7	30
Lot 53.02	4,000*	40.4*	25*	21*	7.5*	15*	1,250	31*	30
Lot 53.03	3,950*	39.9*	25*	21*	7*	14.5*	1,250	31.6*	30

Summary: 20 Lots deficient in area

Additional Required Variances

1. Section 35-127.4 – Boat Yards and Marinas: A Variance for not meeting a specific standard of a permitted conditional use – d(3)

Boatyards and/or marinas are permitted as a conditional use in the R-100 Zone provided that the use and/or structures adhere to the minimum standards of the particular zone and the following:

- a. No principal or accessory building shall be located closer than fifty (50) feet to any street line or twenty-five feet to other property lines, except that buildings for construction, repair or maintenance shall not be located closer than fifty (50) feet to any property line. There is no repair or maintenance area proposed, and the "dock master" building meets the required setbacks. However, there are no provisions in the ordinance for a structure which includes a store, restaurant and residence. **The applicant is seeking a variance for commercial and residential uses in the dock masters building.**
- b. Boats shall not be stored or displayed closer than thirty-five (35) feet to any street line or twenty (20) feet to any property line – It appears that approximately 90% of the boats will be docked closer than 35 ft. to a street line. **The applicant indicates that dockage is neither storage or display. Additional testimony should be provided.**
- c. No railway or other launching facility shall be located closer than twenty feet to any property line. There is no clear indication where the launching area is located. However, the existing launching area is located directly in front of two handicapped designated spaces. It is unclear how boats can be launched if the spaces are occupied. **This area is closer than twenty (20) feet to the property line. The applicant indicates that it is not proposed to provide a hoist nor utilize the launching area since no upland storage is proposed.**
- d. Adequate utilities shall be supplied to each boat slip, including electricity, lighting and water supply - In correspondence the applicant indicates that it proposes to supply the marina area with electricity, water and lighting. **Applicant should provide additional testimony.**
- e. All boat construction is to be carried on within an enclosed building – **The applicant indicates that there will be no boat construction on-site.**



- f. The minimum lot area shall be forty thousand (40,000) square feet – The proposed lot area for the marina is 119,755 square feet, 80% of which is water. **The applicant indicates that the project conforms to the lot area requirement as the ordinance does not specify between upland and water areas.**
- g. A fire lane is provided and maintained open at all times – No fire lanes or access is provided on the marina's property. **Access to the docked boats may be a problem with vehicles parked all along the public street adjacent to the marina.**

The applicant indicated that the roadways associated with Doyle Drive, Williams Street and Riviera Terrace will be maintained open at all times and will serve as fire lanes and therefore they felt that no variance for this items is required.

2. Parking

- a. Section – 35-63 requires parking to be off-street and 31 of the proposed parking spaces for the marina are located on Doyle Drive, Williams Street and Riviera Terrace adjacent to the marina within the public right-of-way.

The applicant has indicated that the existing marina has functioned with parking along these streets for more than 40 years. These streets are dead-end streets which primarily service the marina only. It is simply proposed to maintain the same operation.

This may have been the case but now the area is to be developed with residential dwelling units with paved streets. Will parking be adequate if one of the residences has a party.

- b. Off-street parking required for marina:

71 boat slips x 1.5 spaces per slip	107 spaces
2 employees x 1 space per employee	<u>2 spaces</u>

109 spaces required – 22 spaces on marina property provided.

The applicant has indicated that the 53 parking spaces proposed utilizes a ratio of 0.75 spaces per slip and that this ratio is considered both by industry standards and CAFRA regulations to be acceptable. The applicant should provide additional testimony. The Board should keep on mind that 31 of the proposed parking spaces are on-street parking.

- c. The dock master restaurant/store/residence has no off-street parking provided. At a minimum off-street parking for the residence should be provided.

The applicant indicates that the dock master building is intended as an auxiliary use to the marina and, as such is not intended to generate additional parking. Testimony should be provided.

- d. An additional variance may be required as the applicant has indicated that the dwelling units contain 3 bedrooms which require 2 parking spaces. However, the architectural plans show a room on the first floor noted as a den which is the same as the guest bedroom immediately next to it. This room, if considered a bedroom, would make all the units 4 bedroom units which require 2.5 parking spaces per dwelling unit or for the 21 dwelling units 52 spaces instead of the 42 spaces provided.

- e. Summary of parking:

Use	Spaces Required	Spaces Provided
Marina	109	
21 – 3 Bedroom Single Family Dwellings	42	42
Dock Master Building (Restaurant/Store/Residence)	2+	



On-Street Spaces		31
Off-Street Spaces (Lot 35.01)		22
Total	153+	95
Total (If dwelling units are 4 bedrooms)	164+	95

3. Waivers

It appears that the applicant is seeking waiver from three of the six items mentioned on page 3 of the Remington & Vernick memo dated November 15, 2011 and has provided responses as follows:

- Plans and profiles of proposed utility layouts, such as sewers, storm drains, water, gas and electric, showing feasible connections to existing or proposed utility systems. The applicant has indicated that the plans denote the fact that it is proposed to construct sewers, storm drains, water, gas and electric for this project. The applicant has indicated that the details and profiles for these proposed utilities are not relevant to the variance application since the applicant commits to providing these utilities. A waiver has been previously granted by the Zoning Board and the requested information will be provided as part of the site plan.
- Location and description of monuments whether set or to be set, drains, water, gas and electric. The applicant indicates the location and description of monuments to be set is a final site plan detail not relevant to review of the requested variances. The drains, water, gas and electric are contained in item #1 and are included in the waiver granted by the Board.
- Riparian Easements must be listed on the plans. The Riparian buffer from Barnegat Bay is shown as 50 ft. on the plans. The applicant has indicated that there are no riparian easements. Existing riparian grants have already been shown on the plans. The riparian buffer to Barnegat Bay as required by the Flood Hazard Area Control Act is shown on the plans, the location and width must be verified by the NJDEP as part of the CAFRA review process.

It should be noted that waivers were granted for the above mentioned items for completeness only.

Use and "c" and "d" Variances:

The applicant should provide professional testimony to the Board regarding the "special reasons" as prescribed in the Municipal Land Use Law for granting of "d" variances. These may include reasons such as the lot being particularly well suited to the use proposed, and that the changes will advance the purposes of the Municipal Land Use Law as described in 40:55D-2 Purpose of the Act. The burden of proof is on the applicant and the proofs required for the granting of a "d" variance carry a higher degree of satisfaction and also require an affirmative vote from five (5) of the voting members of the Board. It should be noted that, even though the applicant has provided a *variance plan* and preliminary plat for informational purposes, the subdivision/site plan is not before the Board at this time. However, the applicant is requesting all of the associated "c" variances which are required for this proposal.

Therefore, the Board must also determine if all of the "c" variances can and should be granted.

- 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 structure 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 purpose 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.

And, for any variances, the Board must also be satisfied that the variances can be granted without substantial detriment to the public good and/or neighborhood or the Municipal Zoning Ordinance and/or Township Master Plan.

It should be noted that Berkeley Township recently adopted a new Master Plan and Zoning Map which provided that the areas would remain R-100 single family residential with a medium density requirement of one unit per 10,000 square feet of area. The applicant should be prepared to provide additional testimony with regard to reconciling this inconsistency with the Master Plan.

C. General Review Comments

1. The applicant has indicated that the dwelling units would be the same as the townhouse unit containing three (3) bedrooms except that they would be separate units. However, the designated "den" on the first floor, could easily become a fourth bedroom. Therefore the Board should be aware that the structures may contain families requiring four total bedrooms. Enforcement of the use of this space is not realistic. In addition, Architectural Plans for the 50 ft. x 50 ft. dwelling unit on Lot 39.07 should be provided.
2. The applicant is requesting "c" variances for lot setbacks, parking, and frontage, and "d" density variances when there are several vacant lots adjacent to the proposal. Professional testimony and proofs should be provided indicating that reasonable attempts have been made to purchase surrounding vacant property in order to reduce or eliminate certain variances. In addition, the applicant has sufficient land to provide compliant lot areas and setbacks.
3. The applicant has indicated that the marina will provide no launching facilities, winter storage or repair areas. The Board should determine if it is reasonable to assume that the parking lot and surrounding area will later become winter storage areas. How will the applicant address these facilities that are normally provided by marina's?
4. The applicant should provide to the Board what regulations are anticipated under CAFRA which may change the location or number of dwelling units, paved roadways, paved parking areas, if any.
5. The applicant should provide to the Board a timeline for the obtaining of all other applicable approvals and permits, including, but not limited to the require subdivision/site plan, CAFRA approval, etc. The site, in its present condition is in an unsightly condition with derelict buildings and miscellaneous equipment and boats, and overgrown vegetation (which may be coastal wetlands and cannot be disturbed). Therefore, the Board should be able to reasonably determine when the site will be improved and/or cleared of the existing non-regulated debris.
6. A preliminary Grading Plan with drainage systems shown schematically without calculations have been provided. Both appear workable, however without calculations the feasibility of the proposal meeting N.J.D.E.P. criteria is unknown.

The Board is to be aware that although some of the garage floor elevations are below the flood hazard elevation of 6 that no mechanical equipment can be installed below the flood hazard elevation.

7. The applicant has provided a very preliminary sanitary sewer plan, however without rim and invert elevations the feasibility of the system can not be determined.

Re: The Cove on Toms River At Berkeley
Application: Use Variance, Density Variance & Bulk Variance
BOA #11-5380
Block 1032, Lots 29, 30, 31, 33, 34 & 34.01
Block 1033, Lots 37.01, 39, 41 & 43
Block 1035, Lots 53 & 56
Block 1036, Lots 35, 35.01, 36, 55 - 55.04
Zone: R-100 Residential Zone
EE & L Project No. 12B4533-7 C01

Page 7 of 7



8. Forty-seven (47) of the fifty-three (53) total parking spaces that are provided for the marina are in excess of 300 ft. from the proposed dock masters building, **so it appears that a waiver from Section 35-63.13.f may be required.**
9. Will the public streets be provided with curbs?
10. Will curbing be provided at the parking lot entrance as required by Section 35-63.4?
11. Will street and parking lot lighting be provided?
12. Is it proposed to delineate the parking spaces within the cartways of the public streets?
13. Will refuse enclosures be provided?

D. Conditions and Recommendations

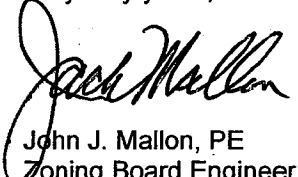
Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The applicant must apply for and receive preliminary and final major subdivision approval and site plan approvals from the Board within a timely manner as determined by the Board, and be conditioned upon receipt of all applicable agency approvals including but not limited to, CAFRA, Tidelands (of applicable), and all regulations as required for construction within a flood plain. Should the proposal be changed or modified due to requirements of the aforementioned or other agencies, the Board may wish to void any variance approvals, and require that they be obtained again with the subdivision and site plan applications.
2. The Board should specify the maximum number of units to be allowed or set standards for lot areas, setbacks, etc.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please do not hesitate to call our office.

Very truly yours,


John J. Mallon, PE
Zoning Board Engineer
PAG/JJM/jet

Cc: The Cove on Toms River At Berkeley, LLC, Applicant
John Doyle, Esq., Applicant's Attorney
Ian Borden, P.E., PDS, Inc., Applicant's Engineer
Anna Wainwright, Board Planner
Alex Pavliv, Board Attorney
File



100 feet
25 m

Doyle Dr, Bayville, NJ

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MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, PP, AICP, *AW*
Office of the Zoning Board of Adjustment Planner

DATE: March 27, 2012

RE: The Cove – REVISED SUBMISSION (Review #3)
PLANNER REVIEW
Application: Density Variance/Bulk Variances
Block 1032, Lots 29,30,31,33,34, & 34.01
Block 1033, Lots 37.01, 39, 41, & 43
Address: Doyle Drive, Williams Street, Bay View Place
Zoning District: R-100 Residential Zone
Plan Title: Use Variance Plans for the Cove on Toms River at
Berkeley; Prepared By: William Stevens, P.E., P.P.; June 20, 2011
Revised through 3/14/12 (7 sheets); Architectural Plans
previously submitted do not match new proposal.
BOA #10-5380
Our File: 1506-Z-114

As requested, our office has reviewed the above named revised variance application and offer the following comments and recommendations:

Zoning Requirements: R-100 Residential Zone

USE VARIANCE d(1): For a principal use not permitted in the Zone

~~The applicant has applied for a bifurcated application to allow 25 Townhouses, a Marina (conditionally permitted use) and a Restaurant/Dock Master residence, in a zone which only permits single family homes under the following standards and conditions:~~

The Applicant has revised the plans, removing the request for 25 Townhouses, requesting instead a “d⁵” Density variance in order to create 22 new single family lots, where 20 lots have less than the required area, and all lots require multiple variances. In addition, the Applicant has retained the Marina use, adding a restaurant, store, and residence in the “dock master” structure, which also requires a “d” variance and various other variances, including parking variances. The application also requires a major subdivision approval which has not been requested at this time.

The Applicant has not been specific about which “bifurcated” variances are being requested at this time. The plans do not clearly identify that the “density” which is being requested includes multiple bulk “c” variances on every proposed new lot. This should be clarified.

Earning Our Reputation Every Day Since 1901

R-100 Residential Zone; 35-95 & 35-96.2

*** Variance Required**

Zoning Table (Title Sheet – Corrections by RVV)

LOT REQUIREMENTS - R-100 ZONE

	Minimum Area (S.F.) 10,000 S.F.	Minimum Frontage 100'	Minimum Setbacks			Combined Side 30'	Minimum Floor Area (3 Bedroom) 1,250 s.f.	Maximum Lot Coverage 25%	Maximum Building Height 35'
			Front 35'	Rear 30'	Side 10'				
Block 1032									
Lot 29.01	4,157 *	40 *	25 *	25 *	7.5 *	15 *	1,250	30 *	30
Lot 29.02	5,687 *	23.67 *	25 *	25 *	6.5 *	14.5 *	1,250	22	30
Lot 29.03	5,517 *	25.1 *	25 *	25 *	6.5 *	14.5 *	1,250	22.6	30
Lot 29.04	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.05	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.06	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.07	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.08	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.09	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.10	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Lot 29.11	4,000 *	40 *	25 *	25 *	7.5 *	15 *	1,250	31 *	30
Block 1033									
Lot 39.01	4,924 *	40 *	25 *	30	7.5 *	15 *	1,250	25	30
Lot 39.02	4,896 *	40 *	25 *	30	7.4 *	15 *	1,250	25	30
Lot 39.03	15,261 *	43.6 *	25 *	30	7.5 *	15 *	1,250	8.2	30
Lot 39.04	8,586 *	40 *	40	30	7.5 *	15 *	1,250	14.6	30
Lot 39.05	8,593 *	40 *	52	30	7.5 *	15 *	1,250	14.5	30
Lot 39.06	13,289 *	107.8	68	30	7.5 *	25.30 *	1,250	9.4	30
Lot 39.07	10,000 *	75 *	35	30	10	25.30 *	2,500	25	30
Block 1035									
Lot 53.01	5,750 *	100 *	25 *	21 *	7.5 *	N/A	1,250	21.7	30
Lot 53.02	4,000 *	40.4 *	25 *	21 *	7.5 *	15 *	1,250	31 *	30
Lot 53.03	3,950 *	39.9 *	25 *	21 *	7 *	14.5 *	1,250	31.6 *	30

53.04?

Sec. 35-127.4 - Additional Variances not requested but required

Boatyards and Marinas: A variance for a specific standard of a permitted conditional use - d(3):

1. A fire lane is provided and maintained open at all times. None is provided.

The Applicant indicates that a fire lane is provided on Doyle Drive, Williams Street and Riviera Terrace, where on street parking is proposed for the Marina. The Board should determine if this meets the standard as required for the Conditional Use. Confirmation that this is an acceptable location for a fire lane must be obtained from the Township Fire Official.

2. A "dock master" restaurant, store, and residence, is not a specifically permitted use in a marina or the R-100 Zone - d(1).

A "d1" Use Variance is required for this proposed mixed use.

Accessory Use: A public pool not permitted in the R-100 Zone - d(1).

The Public pool has been removed from the application.

Parking:

1. Sec. 35-63 requires parking to be "off-street." Applicant is providing 38 parking spaces "on-street" including 7 spaces which are in front of undeveloped lots not owned by the applicant (not permitted).

The Applicant has removed 7 spaces from the on street parking proposal, 31 are still located "on-street". Parking for any use is required "off-street" (35-63.12) a variance is required.

2. Off-street parking required for marina:

$$\begin{array}{rcl} 71 \text{ Boat Slips} \times 1.5 \text{ Spaces per Slip} & = & 107 \text{ Spaces} \\ 2 \text{ Employees} \times 1 \text{ Space per Employee} & = & 2 \text{ Spaces} \\ \hline & & 109 \text{ Spaces Required} \\ & & 22 \text{ Spaces on Marina Lot} \end{array}$$

22 spaces are provided on the Marina lot, and 31 spaces are provided "on street", 109 spaces are required, plus spaces for the "dock master" residence/restaurant/shop. A variance is required.

3. Off-street parking required for town homes:

~~Proposing three-story structures each with 3 bedrooms and 1 "den." R.S.I.S. requires 2.4 parking spaces per 3 bedroom town home. Each town home provides 2 off-street parking spaces—one space in garage and one space in driveway.~~

$$\begin{array}{rcl} 22 \text{ Single Family Homes} \times 2 \text{ Spaces per Unit} & = & 44 \text{ Spaces Required} \\ 44 \text{ Spaces Provided (if garages are provided)} & & \end{array}$$

The Applicant has revised the proposed residential use to single family (3 bedroom maximum) which requires two off street parking spaces. The Applicant indicates that there will be garages, however, architectural plans have not been provided to verify. If there are garages and one space in the driveway, the minimum requirement for parking for this use is met.

4. The Dock Master Restaurant / Store / Residence has no off-street parking provided.

The Applicant indicates that the “dock master” building is intended to be an “auxiliary use” to the Marina so therefore not intended to generate additional parking, however, the use includes a residence which clearly should provide off-street parking for that use alone of two spaces, where none are provided. A variance is required.

5. 37 parking spaces are provided on Lot 39.01 near a proposed pool. It is unclear which uses these spaces are provided for.

The Applicant has removed the proposed public pool from the plans.

6. Summary of parking:

Use	Spaces Required	Spaces Provided
Marina	109	22
25 Townhomes (22 Single Family)	60 (44)	*44 (with garages)
Dock Master Building (Restaurant / Store / Residence)	2+	0
On-Street Spaces		31
Off-Street Spaces (Lot 39.01)		37
Total	155+	66 off street 31 on street

The applicant has not provided the following information, from which they are requesting waivers:
The following completeness items were waived unless otherwise requested by the Board during the proceedings:

1. Plans and profiles of proposed utility layouts, such as sewers, storm drains, water, gas and electric, showing feasible connections to existing or proposed utility systems.
2. Location and description of monuments whether set or to be set drains, water, gas and electric.
3. Riparian Easements must be listed on the plans. The Riparian buffer from the Barnegat Bay is not shown on the plans.

A 50' riparian easement has been shown.

4. Natural resource inventory, including existing topographic elevations, and first floor elevations (as the property is located in a flood plain) have not been provided.

Topographic information has been provided.

5. The purpose of any proposed easement of land reserved or dedicated to public or common use shall be designated and the proposed use of sites other than residential shall be noted. The applicant provides no details on the plan for public access to the water, marina access, and/or any other which may exist. The applicant's engineer offers by correspondence that

access is provided to the marina along the Doyle Drive, Williams Street and Riviera Terrace public roadways, yet later offers that "road vacation requests and/or approvals will be submitted with the site plan application. We are unclear whether the roads are intended to remain public, or proposed to be private.

The Applicant has indicated that no road vacation is requested. However, Public Access and Parking for Public Access has not yet been addressed.

6. Any sections for which a waiver is specifically being requested and a narrative paragraph explaining why the Applicant is entitled to such waiver. The applicant has not submitted a detailed narrative explaining why the waivers are entitled to such waivers.

The above items are "completeness" requirements, and technically until such waivers are granted by the Board, the application is still incomplete. For purposes of requesting the above waivers only unless otherwise agreed to by the Board, the application is to be placed on the December 14, 2011 meeting agenda. **Conditional waivers were granted at the December 14, 2011 meeting.**

Should the Board determine that the above waivers can be granted and the application is presented as submitted, we offer the following comments and recommendations.

Use and "c" and "d" Variances:

The Applicant should provide professional testimony to the Board regarding the "special reasons" as prescribed in the MLUL for the granting of "d" variances. Those may include reasons such as the lot being particularly well suited to the use proposed, and that the changes will advance the purposes of the MLUL as described in 40:55D-2 Purpose of the Act. The burden of proof is on the applicant and the proofs required for the granting of a "d" variance carry a higher degree of satisfaction and also require an affirmative vote from five (5) of the voting members of the Board. It should be noted that, even though the applicant has provided a *site* plan for informational purposes, the site plan (subdivision) is not before the Board at this time. However, the applicant **appears to be** requesting all of the associated "c" variances which are required for this proposal.

Therefore, the Board must also determine if all of the "c" variances can and should be granted. It may be difficult for the Board to determine whether or not this use is appropriate without all of the site plan information being before them.

- 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 purpose 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...

And, for any variance, the Board must also be satisfied that the variances can be granted without substantial detriment to the public good and/or neighborhood or the Municipal Zoning Ordinance and/or Township Master Plan.

For the granting of the "c" variances the applicant must have sent certified letters to adjacent property owners asking to purchase additional lands and/or requesting whether or not those owners wished to purchase the subject parcels in the alternative. Proof of same notice and requests should be provided to the Board office, and copied to our office in advance of the meeting date. The applicant should provide enough lead time to adequately satisfy the Board that the neighbors have had sufficient time to respond. The applicant must have made a good faith effort to try and acquire lands which would either eliminate or lessen all variances requested.

It should be noted that Berkeley Township recently adopted a new Master Plan and Zoning Map, which provided that the area would remain R-100 single family residential with a medium density requirement of one unit per 10,000 square feet of area. The applicant should be prepared to provide professional testimony with regard to reconciling this inconsistency with the Master Plan.

A. PROJECT OVERVIEW

The proposed project is located in the R-100 Zone adjacent to the Barnegat Bay-Toms River tidal waters. The project requires CAFRA approvals, which the applicant proposes to pursue should the variances be granted. The applicant is pursuing all "d" variances and "c" variances required as proposed on the conceptual plans. Should the Board grant the requested variances, the applicant would be required to return with a completely detailed Site Plan/Subdivision-Consolidation application. It should be noted that CAFRA will strictly regulate how much of the land can be covered by impervious surfaces. The applicant is requesting a variance for lot coverage (building coverage) of 36.1% [which exceeds the maximum of 30% permitted by CAFRA.] eleven (11) lot coverage variances.

The proposed project is for ~~[twenty-five (25) three story townhouses]~~ 22 new single family lots, a marina, dock master/restaurant/store/residence structure, ~~[and a swimming pool]~~. The project is proposed as one project on four (4) separate (3) non-contiguous blocks. The existing lots presently contain vacant wooded areas with derelict structures and boat storage areas. The existing marina boat slip area contains damaged pilings, bulkheads and docks. Most of the lots are presently gravel covered lands, along with a beach area, and are fronted almost entirely on gravel covered variable width public streets known as Doyle Drive, Riviera Terrace, and Williams Street. The applicant appears to be proposing that these streets be improved and become private roadways for the proposed development, with parking for the uses provided on the streets.

The applicant is proposing no areas for winter storage of the 71 proposed boat slips, and it is unclear how the applicant will address this need. The Applicant is now indicating that twenty one (21) of the slips will be dedicated to the owners of the new homes. However, this does not answer the question of winter storage. The applicant is indicating no location for public access or parking. The proposed "dock master" structure contains a store, dining areas and a residence, but provides no parking off-street.

The surrounding neighborhood contains some larger modern two story single family homes, and several older one story more modest single family homes.

B. VARIANCES REQUIRED:

The denial letter issued July 5, 2011, by the Zoning Official states: *Applicant proposes to construct multi-family townhouses which are not allowed in the R-100 zone. Applicant also*

proposes to redevelop the existing marina a permitted use in the R-100 zone with 70 boat slips and a dock master building.

It should be noted that the marina use is a "conditionally" permitted use requiring that the applicant comply with all conditions of the conditional use standards as follows:

Sec. 35-127.4 – Boatyards and Marinas.

Boatyards and/or marinas shall be permitted as a conditional use in those zones specified, provided that the use and/or structures shall adhere to the minimum standards of the particular zone and the following:

It should be noted that ORD 35-3 excludes areas beyond the high water mean, a riparian grant, or underwater, for purposes of determining lot area when creating a new lot. Additionally, setbacks are to be taken from the bulkhead not the property line on waterfront properties.

1. No principal or accessory building shall be located closer than fifty (50) feet to any street line or twenty-five feet to other property lines, except that buildings for boat construction, repair or maintenance shall not be located closer than fifty (50) feet to any property line. **There is no repair or maintenance area proposed, and the "dock master" building does not meet the required setbacks (to the bulkhead). And, there are no provisions in the ordinance for a structure which includes a store, restaurant, and residence. Therefore, a "d¹" use variance is required for the "dock master" building.**
2. Boats shall not be stored or displayed closer than thirty-five feet to any street line or twenty (20) feet to any property line. **All boats will be docked within twenty (20) feet of the property line, in the water. No other area is provided.**
3. No railway or other launching facility shall be located closer than twenty feet to any property line. **There is no clear indication where the launching area is located. However, the existing launching area is located directly in front of the two handicapped designated spaces. It is unclear how boats can be launched if the spaces are occupied. This area is closer than twenty (20) feet to the property line.**

The Applicant indicates that there will be no "launching" area, therefore, no variance is required. However, the Applicant must be prepared to describe how boats will enter and leave the water, that are docked at this "marina".

4. Adequate utilities shall be supplied to each boat slip, including electricity, lighting and water supply. **There is no information provided in this regard.**
5. All boat construction is carried on within an enclosed building. **There does not appear to be any boat construction areas proposed.**
6. The minimum lot area shall be forty thousand (40,000) square feet. **The proposed lot area for the marina is 119,755 square feet, 80% of which is water.**

As indicated above, the area underwater is not to be calculated for "lot area", therefore the remaining "marina" lot area may not meet the minimum required square footage. A variance may be required.

7. A fire lane is provided and maintained open at all times. **No fire lanes have been provided.**

The Applicant indicates that a "fire lane" will be maintained on the public street. The Board should decide if this is the intention of the ordinance requirement.

NOTE: Any deviations from the above standards requires a d(3) variance from a specification or standard pertaining solely to a conditional use.

C. GENERAL REVIEW COMMENTS

1. The applicant has not provided any information or provisions for stormwater management on the proposed sites, and they exceed the 30% permitted impervious coverage maximums of the CAFRA regulations, as well as the 25% maximum building coverage of the township ordinance. **No topographical elevations have been provided, nor permeability calculations, in order to determine feasibility of the proposed development in this regard. We defer to the Board engineer on stormwater management compliance.**
2. No existing or post development drainage or grading information has been provided, whereas the proposed development is within a flood plain which requires a first floor elevation of 5'. The applicant should be prepared to provide specific information regarding how the flood plain development regulations will be met, and how this will affect drainage on the site, as well as the overall finished height of the structures. We defer to the Board engineer on drainage and grading compliance, however, the Applicant should provide details on flood plain regulations and compliance thereof.
3. The applicant has proposed single family homes with a maximum height of 30 feet. However, grades are proposed to be increased and first floor elevations are proposed approximately two feet above grade. As there were no architectural plans submitted it is difficult to determine if the "effective" finished height will be 30 feet. Architectural plans should be submitted, to determine the visual impacts of the new construction proposed.
4. The architectural plans submitted with the original application do not match the new proposed development. Matching plans should be submitted so that the Board can determine the overall impacts of the new development on the neighborhood, as well as compliance with minimum standards and requirements. ~~indicate that the proposed townhouses will contain three (3) bedrooms. However, the designated "den" on the first floor, could easily become a fourth bedroom. Therefore, the Board should be aware that the structures may contain families requiring four total bedrooms. Enforcement of the use of this space is not realistic.~~
5. The applicant is requesting "c" variances for lot setbacks, parking, and frontages, and "d" density and use variances, when there are several vacant lots adjacent to the proposal. Professional testimony and proofs should be provided indicating that reasonable attempts have been made to purchase surrounding property which might eliminate or lessen the requested variances.
6. The Applicant has proposed that twenty-one (21) of the slips are to be dedicated to owners of the homes. If approval is granted it should be a condition of approval that the deeds for twenty-one (21) of the homes include a boat slip.

Page 9

7. The proposed marina provides for no winter storage or repair areas. The Board should determine if it is reasonable to assume that none of the "open space" areas will later become winter storage or repair areas. If not, how will the facility address these normally provided accessory needs of a boat marina? **It would not be advisable, for instance, if boats owned by the new homes are parked or worked on in the streets.**
8. The applicant does not appear to provide for any "public access" and/or parking for the marina or beach, and **fishing**, and should provide professional testimony regarding whether or not it is intended for the marina and beach to become a "private" facility.
9. The applicant should provide to the Board what regulations are anticipated under CAFRA which may change the location or number of units, paved roadways, paved parking areas, if any.
10. The applicant should provide to the Board a timeline for the obtaining of all other applicable approvals and permits, including, but not limited to the required site plan and **major subdivision**, CAFRA approval, etc. The site, in its present condition is in an unsightly condition with derelict buildings and miscellaneous equipment and boats, and overgrown vegetation (which may be coastal wetlands and cannot be disturbed). Therefore, the Board should be able to reasonably determine when the site will be improved and/or cleared of the existing non-regulated debris, **and the deteriorating bulkhead and docks repaired.**

D. CONDITIONS AND RECOMMENDATIONS:

Should the Board determine that the relief requested should be granted, we recommend that the approval be conditioned upon the following:

1. The Applicant must apply for and receive preliminary and final major site plan approval and subdivision/consolidation approvals from the Board within a timely manor as determined by the Board, and be conditioned upon receipt of all applicable agency approvals including but not limited to, CAFRA, Tidelands (if applicable), and all regulations as required for construction within a flood plain. Should the proposal be changed or modified due to requirements of the aforementioned or other agencies, the Board may wish to void any variance approvals, and require that they be obtained again with the **subdivision/site plan** application.

We reserve the right to request additional information, and/or plans should additional variances or concerns be indicated during the public hearing.

Should you have any questions or we can be of any further assistance on this matter, please don't hesitate to call our office at 732-286-9220.

GOD BLESS AMERICA

ARW:ktr

Cc: The Cove on Toms River at Berkeley, LLC, Applicant
Ian M. Borden, President PDS/Applicant Engineer
Alex Pavliv, Board Attorney
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