

TOWNSHIP OF BERKELEY  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING AGENDA  
December 12, 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. Sciara (Bayside Builders) BOA # 12-5407

\*\*\* Carried from November Meeting

Variance requested	Rear setback Bulk Variance
Project:	Construct a 572 s.f. addition
Block: 1561	Lot: 16
Address: 234 Teakwood Dr.	Zone: R-64

Denial reads: "Applicant proposes to construct a 572 s.f. addition that will leave a 15.74 ft. setback where 20 ft. is required."

2. Matthew Mazza BOA # 12-5406

Variance requested	Front Yard Setback on Paper St.
Project	Addition of a new living space area
Block 596	Lots 45 thru 50
Address: 371 Veterans Blvd.	Zone: R-150

Denial reads: "Applicant proposes to construct a 36 ft. x 18 ft. living space addition 23.5 ft. from the front property line where 35 ft. is required".

3. Diane Zondiros Cole BOA # 12-5418

Variance requested	Certificate of Non-Conformance
Project	Re-establish a marina on waterfront property
Block: 1022	Lots 18, 18.02 & 22
Address: 7 Mill Creek Road	Zones: R-200

Denial reads: "Applicant is requesting a certificate of non-conformity for dual usage of residential property. The applicant proposes to re-establish a marina in the waterfront property of a single family dwelling".

- G. RESOLUTIONS –
- I. VOUCHERS
- H. ADJOURNMENT



# Ernst, Ernst Lissenden

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John N. Ernst, P.E., C.M.E., P.P.

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

October 16, 2012

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

Re: **BOA #12-5407**  
**Applicant: Angela Sciara**  
**Application: Rear Setback Bulk Variance**  
**Block 1561, Lot 16**  
**Fronting on Teakwood Drive**  
**Zone: R-64**  
**EE & L Project No. 12B4533-7S01**

Dear Ms. Kazmac:

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 same:

The denial letter issued July 12, 2012 by the Zoning Official states "that the applicant proposes to construct a 572 s.f. addition that will leave a 15.75 ft. setback where 20 ft. is required.

## 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 November 14, 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. The applicant has submitted the following items for review:
  - An amended plan showing the proposed building addition entitled "Map of Survey, Tax Lot 16, Block 1561 (Sheet No. 127) Berkeley Township, Ocean County, New Jersey", dated August 12, 2012, prepare by Bernard M. Collins, L.S.
  - Preliminary architectural plans.
  - A 200 ft. radius map and certified list of property owners.
  - An application checklist.

## B. General Comments

The property is located on the southside of Teakwood Drive approximately 700 ft. east of Bayview Avenue. The property lies within the R-64 Zone and comprises an area of 6,400 s.f. The site contains a one story frame dwelling with a concrete driveway and a frame deck extending from the dwelling unit to a bulkhead. Two frame sheds near the west property line and a plastic shed in the front yard area are also present on the site.

The subject property is in a special flood hazard area which is an area subject to inundation by the 1% annual chance flood with a base flood elevation of 6.0.



The applicant proposes to construct a 572 s.f. addition along the west side and rear of the building leaving a rear yard setback of 15.37 ft; whereas 20 ft. is required.

**C. Variances Requested and Items of Discussion**

1. A variance is required for insufficient rear yard setback; whereas 20 ft. minimum is required and 15.37 ft. is proposed.
2. The applicant must provide testimony and proofs supporting the granting of the variance/
3. The applicant should provide photographs of the property.
4. The Board should be aware that the deck in the rear yard maybe in violation of the rear yard setback requirements; whereas 20 ft. minimum is required and 0 ft. is existing. In addition, the two existing frame sheds are in violation of the side setback requirement for accessory structures; whereas 5 ft. minimum is required and 2 ft. ± scaled is existing. Furthermore there is a plastic shed in the front yard area which is in violation of the Ordinance.

**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 (if applicable):

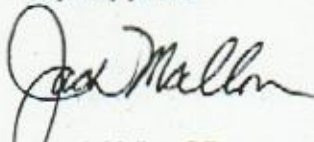
1. The Applicant shall obtain any and all agency approvals, including but not limited to, CAFRA, NJDEP, Building Department, Fire Department, Health Department, and Engineering Departments, etc., if required.
2. The Applicant certifying that the proposed building addition will not encroach into existing 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.

Otherwise all of the above mentioned non-conformances are existing conditions which the Board generally takes no action.

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.

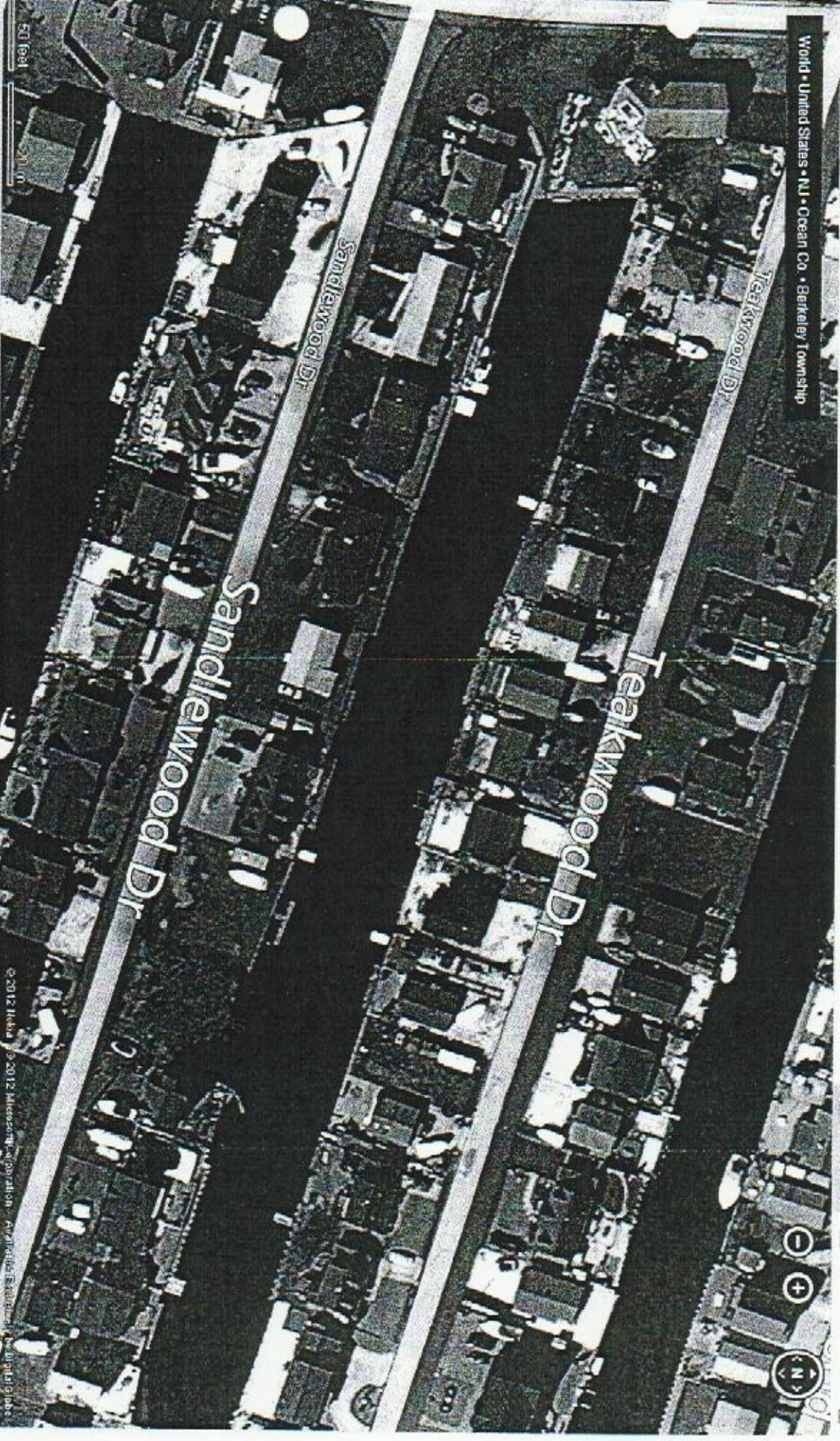
Very truly yours,



John J. Mallon, PE  
Zoning Board Engineer

JJM/jet

cc Anna Wainwright, Board Planner  
Alex Pavliv, Board Attorney  
Angela Sciara, Applicant  
Bayside Builders, Attn: Joan Scullion  
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: October 17, 2012

RE: Sciara, Angela M.  
PLANNING REVIEW-#1  
Application: Addition  
Block 1561- Lot 16  
Address: 237 Teakwood Drive  
Zoning District: R-64 Residential Zone  
Plan Title: Map of Survey -Prepared by Bernard Collins, PLS  
Dated 8-2-12  
BOA#: 12-5407  
Our File: 1506-Z-146

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

## Zoning Requirements:

### R-64 Residential Zone §36.96.3 & §35-95

Principal Bldg	Required	Existing	Proposed	Variance Required
Minimum Lot Area	6,400 SF	6,400 SF	6,400 SF	None
Minimum Lot Frontage	80 FT	80 FT	80 FT	None
Front Yard Setback	25 FT	26.16 FT	26.16 FT	None
Rear Yard Setback	20 FT	23 FT±	15.75 FT	Variance Required
Side Yard Setback	7 FT	8 FT	8 FT	None
Side Yard Combined	18 FT	55.5	45.5	None
Min Floor Area	864	720	1292	**Eliminates a variance
Min Accessory setback	5 FT	< 5 FT	< 5 FT And in Front yard	Existing Variance Conditions
Max Cov	30%	20%	23%	None

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**A. PROJECT OVERVIEW**

The existing 1 story single family dwelling is located on Teakwood Dr. in the Glen Cove coastal area of the Township, with the rear yard backing up to a lagoon. The Applicant is proposing a single story addition to the existing single story home. The existing home is presently undersized in floor area, and the proposed addition will increase the floor area by 572 square feet. The lot is conforming in all aspects except for two existing sheds in the side yard which are located approximately one (1) foot from the property line, where five (5) foot is required, and an existing shed in the front yard which is not permitted. The new addition will violate the rear yard setback by 4.26 feet. The rear yard setback is the only variance required for the new addition, however, the applicant must obtain variances for the existing locations of three sheds. The lot coverage overall is still under the maximum permitted. Testimony should be provided to the Board describing the proposed addition and the interior use of the space.



Aerial map for neighborhood comparison. Copied from Google earth and modified by RVV.

**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. RECOMMENDATIONS

1. The Applicant should be prepared to describe to the Board the reasons for the addition and the reasons for their "hardship" as described above.
2. The Applicant should be prepared to describe and provide photos of the existing neighborhood, and conditions in existing front and rear yards in a comparison to the proposed addition.
3. The Applicant should be prepared to provide testimony regarding the overall increase in size and its purpose.
4. The Applicant must provide testimony as to the variances required for all of the sheds.
5. The Applicant should provide testimony regarding the existing deck. If the deck is ground level (under 18" above ground) a variance is not required, however, a deck above 18" would also require a variance as it must meet the minimum rear setback of 20 feet, whereas the deck is up to the bulkhead (0').

#### D. CONDITIONS

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, and/or appropriate other involved party.
2. The Applicant should provide testimony regarding mitigation measures proposed to ensure that the new addition does not create any drainage or stormwater runoff onto adjacent properties. If the Applicant is changing any of the grading on the property, a grading permit approved by the Township Engineer may be required.

3. The Applicant is to submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant must provide all required plans necessary to show compliance with all Building Codes to the Building Department at the time of the permit application, and must obtain any and all other permits and approvals which may be required, including but not limited to NJDEP (CAFRA) if required.

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

ARW/ktr

cc: J. Mallon, P.E. – Board Engineer  
A. Pavliv, Esq. – Board Attorney  
Angela Sciara – Applicant



# Ernst, Ernst Lissenden

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John N. Ernst, P.E., C.M.E., P.P.  
Carl P. Werner, L.S., P.P.  
Harold Mathis, Jr., L.S., P.P.

October 4, 2012

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

Re: **BOA #12-5406**  
**Applicant: Matthew Mazza**  
**Application: Front Yard Setback on Paper Street**  
**Block 596, Lots 45 thru 50**  
**Fronting on Veterans Boulevard**  
**Zone: R-150**  
**EE & L Project No. 12B4533-7M06**

Dear Ms. Kazmac:

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 same:

The denial letter issued July 9, 2012 by the Zoning Official states that "the applicant proposes to construct a 36 ft. x 18 ft. living space addition 23.5 ft. from the front property line where 35 ft. is required".

### 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 **November 14, 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. The applicant has submitted the following information for review:
  - A plan entitled "Map of Survey Showing Proposed Addition, Tax Lots 45 thru 50, Block 596, Berkeley Township, Ocean County, New Jersey", dated August 11, 2012, prepared by Gravatt Consulting Group.
  - Preliminary Architectural Plans.
  - A 200 ft. Radius Map and certified list of property owners.
  - An application checklist.
  - Photographs of the existing house.

### B. General Comments

The property is located on the southwest corner of Veterans Boulevard and Jackson Avenue. The property lies within the R-150 zone and comprises an area of 15,000 s.f. The property has been developed with a one-story frame dwelling, wood shed, an above ground pool, a fenced in rear yard and a concrete driveway.



The site lies within Flood Zone "X" (unshaded), which is an area determined to be outside the 0.2% annual chance flood plain.

The applicant proposes to construct a 36 ft. x 18 ft. living space addition to the east end of the existing dwelling unit adjacent to Jackson Avenue which is a paper street leaving a front yard setback of 23.7 ft.

**C. Variances Requested and Items of Discussion**

1. A variance is required for insufficient front yard setback; whereas 35 ft. minimum is required and 23.7 ft. is proposed from the new addition. It should be noted that the proposed setback is from a paper street with a 45 ft. wide right-of-way.
2. The applicant must provide testimony and proofs supporting the granting of the variance.
3. How many bedrooms are in the existing house and what will the addition be used for?
4. If the addition is used for bedrooms will parking be adequate to comply with R.S.I.S.? If there are four or more bedrooms a *de minimus* exception will be required.

**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 building addition 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  
Matthew Mazza, Applicant  
Gravatt Consulting Group, Applicant's Engineer  
File

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**MEMO:** Berkeley Township Zoning Board of Adjustment

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

**DATE:** October 16, 2012

**RE:** Mazza, Matthew  
PLANNING REVIEW-#1  
Application: Addition  
Block 596 - Lots 45-50  
Address: 371 Veterans Blvd  
Zoning District: R-150 Residential Zone  
Plan Title: Map of Survey Showing Proposed Addition  
Prepared by: John P. Augustine, P.L.S., dated 9-8-04, revised 8/11/12  
BOA#: 12-5406  
Our File: 1506-Z-144

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

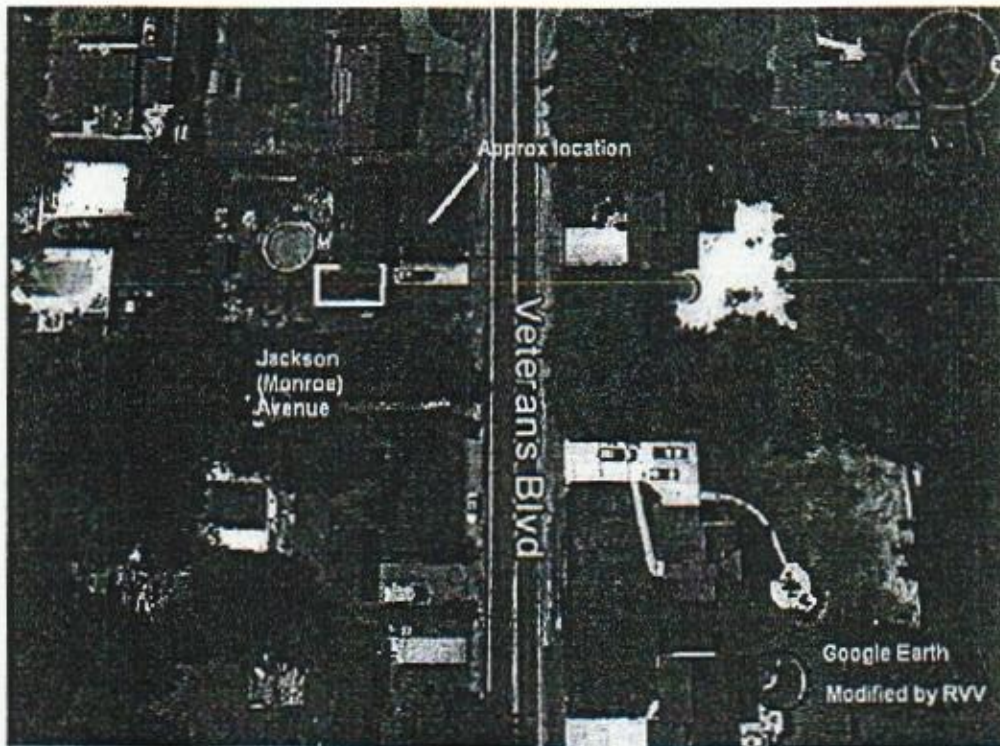
## Zoning Requirements:

### R-150 Residential Zone \$36.96.2 & \$35-95

<u>Principal Bldg</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Required</u>
Minimum Lot Area	15,000 SF	3,150 SF	3,150 SF	None
Minimum Lot Frontage	100 FT	100/150 FT	100/150 FT	None
Front Yard Setback	35 FT	48 FT	23.7 FT	Variance Required
Rear Yard Setback Structure	30 FT	78 FT±	68.1 FT	None
Side Yard Setback	10 FT	12.3 FT	12.3 FT	None
Side Yard Combined	25 FT	N/A	N/A	None
Maximum Height	35 FT	< 35 FT	< 35 FT	None
Maximum Lot Coverage	25%	-	17/1%	None

**A. PROJECT OVERVIEW**

The existing 1 story single family dwelling is located on Veterans Boulevard and Jackson Avenue (AKA Monroe) between Elizabeth and Brick Avenues. Jackson Avenue is presently unimproved and wooded. The Applicant is required to meet the minimum front yard setback from both streets. The proposed one story 18' X 36' addition is located on the east side of the home, 23.7 feet from Jackson Street, whereas 35 feet is required. Therefore, the Applicant requires a variance for the setback from Jackson Street. The plans appear to indicate the construction of two new bedrooms and a bathroom. Testimony should be provided to the Board describing the proposed addition and the interior use of the space.



Aerial map for neighborhood comparison. Copied from Google earth and modified by RVV.

**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. RECOMMENDATIONS**

1. The Applicant must provide a certification from all owners of the property, certifying agreement with the proposal. Property owners are listed as Matthew and Mollie R. Mazza.
2. The Applicant should be prepared to describe to the Board the reasons for the addition and the reasons for their "hardship" as described above.
3. The Applicant should be prepared to describe and provide photos of the existing neighborhood, and conditions in existing front and rear yards in a comparison to the proposed addition.
4. The Applicant is proposing a new addition which appears to increase the bedroom and bathrooms on this property. The Applicant should be prepared to provide testimony regarding the overall increase in size and its purpose.
5. Testimony should be provided regarding the capacity of the existing septic and the affects, if any, of the expansion.

**D. CONDITIONS**

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, and/or appropriate other involved party.
2. The Applicant should provide testimony regarding mitigation measures proposed to ensure that the new addition does not create any drainage or stormwater runoff onto adjacent properties. If the Applicant is changing any of the grading on the property, a grading permit approved by the Township Engineer may be required.
3. The Applicant is to submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant must 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.

Berkeley Zoning Board  
Our File: 1506-Z-144

Page 4

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

ARW/ktr

cc: J. Mallon, P.E. – Board Engineer  
A. Pavliv, Esq. – Board Attorney  
Matthew Mazza – Applicant



# Ernst, Ernst Lissenden

A New Jersey Corporation

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

November 14, 2012

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

**Re: BOA# 12-5418**  
***Applicant: Diane Zondiros Cole***  
***Application: Certificate of Non-Conformance***  
***Block 1022, Lots 18, 18.02 & 22***  
***Fronting on Mill Creek Road***  
***Zone: R-200***  
***EE & L Project No. 12B4533-7C06***

Dear Ms. Kazmac:

Our office has reviewed the following application for a Certificate of Non-Conformance for the above referenced property for completeness. The following comments are offered in regard to same.

The denial letter issued June 25, 2012 by the Zoning Official states that the "applicant is requesting a certificate of non-conformancy for dual usage of residential property. The applicant proposes to re-establish a marina in the waterfront property of a single family dwelling".

### **A. Completeness**

The applicant has submitted the following information:

- A plan entitled "Location Survey, Tax Lots 18, 18.01 & 22, Block 1022, as shown on Tax Map Sheet No.'s 65 & 66, Berkeley Township, Ocean County, New Jersey", dated September 16, 1991, prepared by Hedges & Associates.
- A plan entitled "Survey Map, prepared for Diane Zondiros, Block 1022, Lots 18, 18.021 & 22, Berkeley Township, Ocean County, New Jersey", dated August 31, 2009, prepared by East Coast Engineering, Inc.
- A 200 ft. Radius Map and certified list of property owners.
- A copy of a Deed of Consolidation for Lots 18 & 18.01, Block 1022, dated January 10, 2012 and filed on February 3, 2012.
- A copy of the denial letter dated June 25, 2012.
- A copy of a Lease of Business Premises between Frederick R. Wiedeke/Diane Z. Wiedeke husband and wife and Stump Creek Slipways, dated January 1, 1992.
- A copy of a Lease of Business Premises between Stump Creek Slipways, Inc. and deRouville Boat Shop, LLC, dated September 2004.
- A copy of a court ruling, docket no. C-81-10, dated February 24, 2011.



- A letter from Diane Z. Cole (applicant) outlining the sequence of events pertaining to the dual usage of the property.
- 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 **December 12, 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.

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

#### **B. General Comments**

The property is located on the east side of Mill Creek Road, 900 ft. north of Chelsea Avenue. The northern portions of the site are adjacent to a lagoon formed by the Toms River. The site contains an area of 1.15 acres and is situated in the R-200 Zone. At present the site contains a 2-story dwelling unit with a dirt/gravel driveway, a wood bulkhead with pilings to provide seven (7) boat slips containing a second principal use, a marina. No new construction is proposed as the applicant is requesting a Certificate of Continued Use (Certificate of Non-Conformance) which will allow the property to continue as a residence and a marina.

#### **C. Variances/Evidence and Items of Discussion**

1. The applicant is seeking to continue to use the property for both residential and marina uses which is not permitted in the R-200 Zone. In Section 35-96.2, a residential use is permitted, however a marina is a conditional use. In this case the marina does not meet the conditional use requirements (Section 35-127.4) for a marina. In any event the dual usage of the property is also not allowed.
2. The applicant has provided evidence that the property has had a dual use for a long period of time. The applicant has provided the following:

- a. A copy of a court ruling, Jocket no. C-81-10 dated February 24, 2011. The court ruling indicates that testimony was given by Patricia Wiedeke (applicant's ex-mother-in-law) that the marina business was started on Lot 19 around 1969. Under an oral agreement with Joseph G. Colton and Sue Colton his wife who were the prior owners of Lots 18, 18.01 & 22 the Wiedekes were allowed to use and rent boat slips at the property. In a letter from the applicant she indicates that the Colton's built their retirement home (7 Mill Creek Road) in 1976. Therefore it would appear that the property has had dual use since that time. The applicant should provide proof such as a copy of the building permit for the residential dwelling unit.

- b. The applicant indicates in her letter that Mrs. Colton resided at 7 Mill Creek Road until 1991 at which time she sold the property to her and her husband Frederick R. Wiedeke, Jr. at that time they formalized the lease of the slips on Lot 18.

A Lease of Business Premises between Frederick R. Wiedeke, Jr. and Diane Z. Wiedeke (applicant), husband and wife and Frederick R. Wiedeke and Patricia S. Wiedeke, T/A Stump Creek Slips has been provided. The lease agreement leases six (6) slips at the northwest end of Lot 18 to Stump Creek Slipways for a period of twenty (20) years from November 25, 1991 to November 25, 2011.

- c. A Lease of Business Premises between Stump Creek Slipways, Inc., and deRouville, LLC has also been provided. This lease includes the subletting of the six (6) slips located on Lot 18, Block 1022. The lease is for a period of five years with a tenant option to renew for two additional five year periods. The applicant indicates in her letter that it is a thriving business



located at 207 Chelsea Avenue, Bayville on lot 19, Block 1022. It is also indicated that there are two residences on Lot 19.

- d. The applicant also indicates in her letter that during her divorce proceedings the lease of the slips was modified and now remains in effect through 2019.
- e. Both surveys that were submitted appear to indicate that the boat slips are on Lot 18.01 which was consolidated with Lot 18 on February 3, 2012. The surveys would indicate that the slips or marina use is on Lot 18.01 while the residential use is on Lot 18.

It should be noted that both leases and the court ruling indicates that the boat slips are on lot 18. It certainly appears that both Lot 18.01 and Lot 18 were always considered to be one lot by the applicant, her ex-husband and in-laws.

3. A plan should be provided that shows the exact location of the lot line between Lots 18.01 and 18.
4. Can the original Certificate of Occupancy for the existing 2-story dwelling unit be provided?
5. Testimony of neighbors with knowledge of the property or previous owner (Colton) should be provided.
6. Can the applicant provide any other evidence in support of her application?
7. Photographs of the site should be provided.
8. Has anything changed at the site due to Hurricane Sandy?
9. Where do people who have one of the slips on Lot 18 park?

**D. Conditions and Recommendations**

Should the Board determine that sufficient evidence has been provided to grant the Certificate of Non-Conformance the approval should be conditioned on the following:

1. The Board should set the maximum number of slips allowed on Lot 18.

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

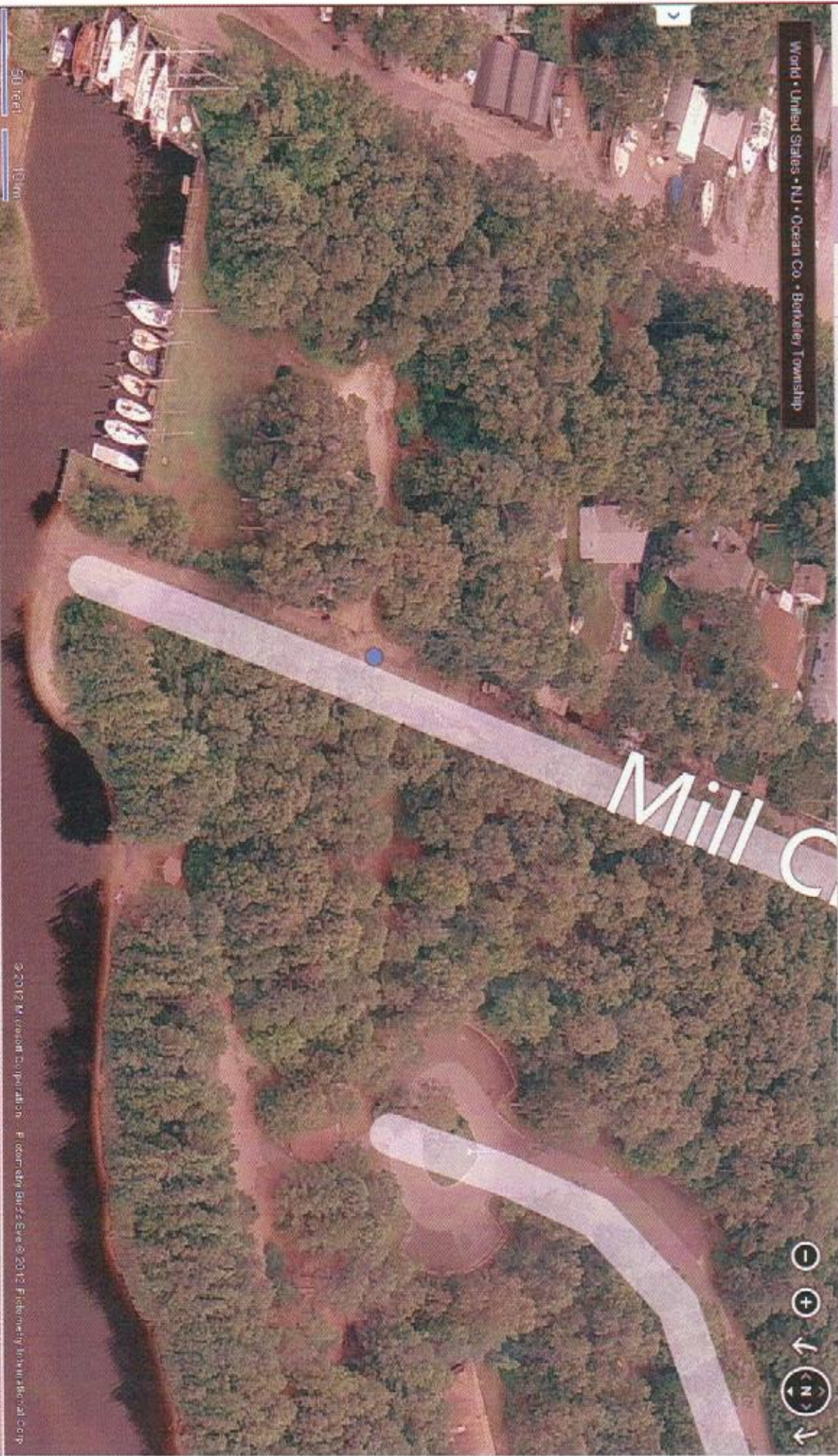
Should you have any questions or we can be of any further assistance on this matter, please do not hesitate to call our office.

Very truly yours,

John J. Mallon, PE  
Zoning Board Engineer

PAG/JJM/jet

cc Anna Wainwright, Board Planner  
Alex Pavliv, Board Attorney  
Diane Z. Cole, Applicant  
file



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300 Penham Avenue, 3rd Floor  
Secaucus, NJ 07094  
(201) 624-2137

MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, PP, AICP.

Zoning Board of Adjustment Planner *AW*

DATE: November 3, 2011

RE: Diane Cole-Review #1

Application: Request for Certificate of Non-Conforming Use  
Block 1022, Lot 18, 18.01

Address: 7 Mill Creek Road

Zoning District: R-200 Residential

Plan Title: Location Survey, prepared by D. Ernest Hedges, P.L.S.,  
dated 9/16/91; Survey Map, prepared by Jay F. Pierson, P.L.S.,  
dated 8/31/09.

BOA #12-5406

Our File: 1506-Z-147

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

The Applicant is before the Board in order to obtain a certificate of non-conformity validating what she describes as the continuous leasing of seven (7) boat slips at the northernmost portion of her lot, along with the single family residential use. The property is located at the northernmost border of the Township adjacent to the Toms River waterfront. The property is located within the R-200 Zone. The property presently contains a two-story single family residence, with a bulkheaded area containing seven (7) boat slips. The parcel is located adjacent to a marina which was previously operated by her prior in-laws for over forty years.

## Zoning Requirements:

**R-200 – Residential Zone; § 35-96.2, §35-95 -** The existing 1.15 acre parcel complies with all of the minimum lot requirements in the Zone for a single family home, however, the combined use of boat slip rentals and residence is not a permitted use in the zone. The Applicant has provided various forms of evidence which support her assertions that the property has had seven (7) leased boat slips dating back to 1969. The Applicant offers the following in support of her request.

1. A "Location Survey" for Block 1022, Lots 18, 18.01, & 22, prepared by D. Ernest Hedges, P.L.S., dated September 16, 1991, which was obtained at the time the home was purchased from the previous owner.

2. A "Survey Map" for Block 1022, Lots 18, 18.01 & 22, prepared by Jay F. Pierson, P.L.S., dated August 31, 2009, which was prepared during litigation proceedings over ownership and use of a boat slip, in February of 2011.
3. Superior Court decision of Judge Vincent Grasso, with regard to the aforementioned litigation.
4. Lease between the applicant (and prior husband) and the Wiedeke's, owners of the adjacent marina, of six boat slips on the property signed in 1992.
5. Sub-lease agreement, between the Wiedeke's and DeRouville Boat Shop, LLC, regarding six slips on the property signed in 2004.

The applicant is requesting from this Board a Certificate of Non-Conforming Use for the continued lease of seven (7) boat slips on the residential property. Six (6) of the slips are a part of a sub-lease agreement which is subject to renewal through 2019.

The denial states: Applicant requesting a certificate of non-conformity for dual usage of residential property. The applicant proposes to re-establish a marina on the waterfront property of a single family dwelling.

It is our opinion that the applicant has not submitted any proofs that the property was used as a "marina" per se, but that boat slips have been leased from the site by the adjacent marina for approximately 43 years. The applicant has indicated that there is no intention to expand the use at this time and that she understands that an increase in this portion of the use of the site would require prior approvals from this Board.

Under this section of the MLUL the applicant must satisfy the Board that the use was legal upon its inception, was continued substantially in the same form and not otherwise "abandoned" under the law, and therefore entitled to a "Certificate of Non-Conformity".

File submission: The applicant has provided a narrative description of the use of the property, in which she stipulates, and is supported by testimony of her prior husband in the submitted litigation papers, that the front bulkhead area was improved and used for the lease of seven (7) boat slips, by the Wiedeke family, owners of the adjacent marina, since as early as 1969. It is unclear if the added lease area was ever sanctioned by the Township, but it does seem clear that boat lease slips have been in existence for a long time.

NJ Zoning and Land Use; William Cox; (page 299)

"Elements of proof. The proper question presented to the board by one who seeks to obtain a certificate for a nonconforming use is: what was the use which existed on the property in question at the time of adoption of the zoning ordinance? It is this use which the statute protects, and such use must have been continuous. Hence, where a premises was used first for an auto repair shop and then for an awning business and was then again used for auto repairs, it was not a continuous use entitled to protections. "

The applicant, therefore, has the burden of proving to the Board that the "seven (7) boat slip leasing" pre-existed the adoption of the zoning ordinance which prohibited the use. Marina's are a conditionally permitted use in the R-200 Zone, but it is clear that this site does not meet the definition of a "marina", except for the limited leasing and access to six or seven boats slips, and the Board should consider the exact use of the site prior to the ordinance which would prohibit it and the continuation of that use. The applicant does not meet the standards for a "marina" as outlined in §35-127.4, including, but not limited to, the residence on the premises.

**COMMENTS AND RECOMMENDATIONS:**

1. It is imperative that the applicant provide to the board all necessary proofs and testimony regarding the "boat leasing area" she wants to continue. These proofs should be provided by way of testimony, which outlines all of the information which is included in the application package, and any other additional proofs and or witnesses which she would like to present. The burden of proof is on the applicant, and the Board must be satisfied that that burden has been met under the law.
2. The applicant should provide to the board photographs, location, and full details of the use for which she seeks the "Certificate of Non-Conformity".
3. With regard to Lot 22, which the applicant also owns, we did not find any evidence that it was also used for boat leasing, and therefore should not be included in the Board's determinations.
4. The applicant should provide testimony regarding her intentions for the future use of the site.
5. The applicant should understand that the pre-existing non-conforming use of the site is permitted to continue, should the Board find in favor of the application, and that no expansion such as jet ski rentals, or boat repairs, or other types of "marina" uses would be permitted without first obtaining an approval for the "expansion of a non-conforming use".
6. Should the Board determine that the issuance of a "Certificate of Non-Conformity" is appropriate, the Board should provide a specific description of the use, its location, and a specific number of slips included, for which they are issuing the "Certificate", as this use will be considered "permitted" in the described condition as long as it is continuous. It appears from the information supplied that the leases both covered six (6) slips, and that there was a seventh (7<sup>th</sup>) slip under the court decision, which also exists and is under the ownership and use of the applicant (for lease or personal use).

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

EJP/ARW:ktr

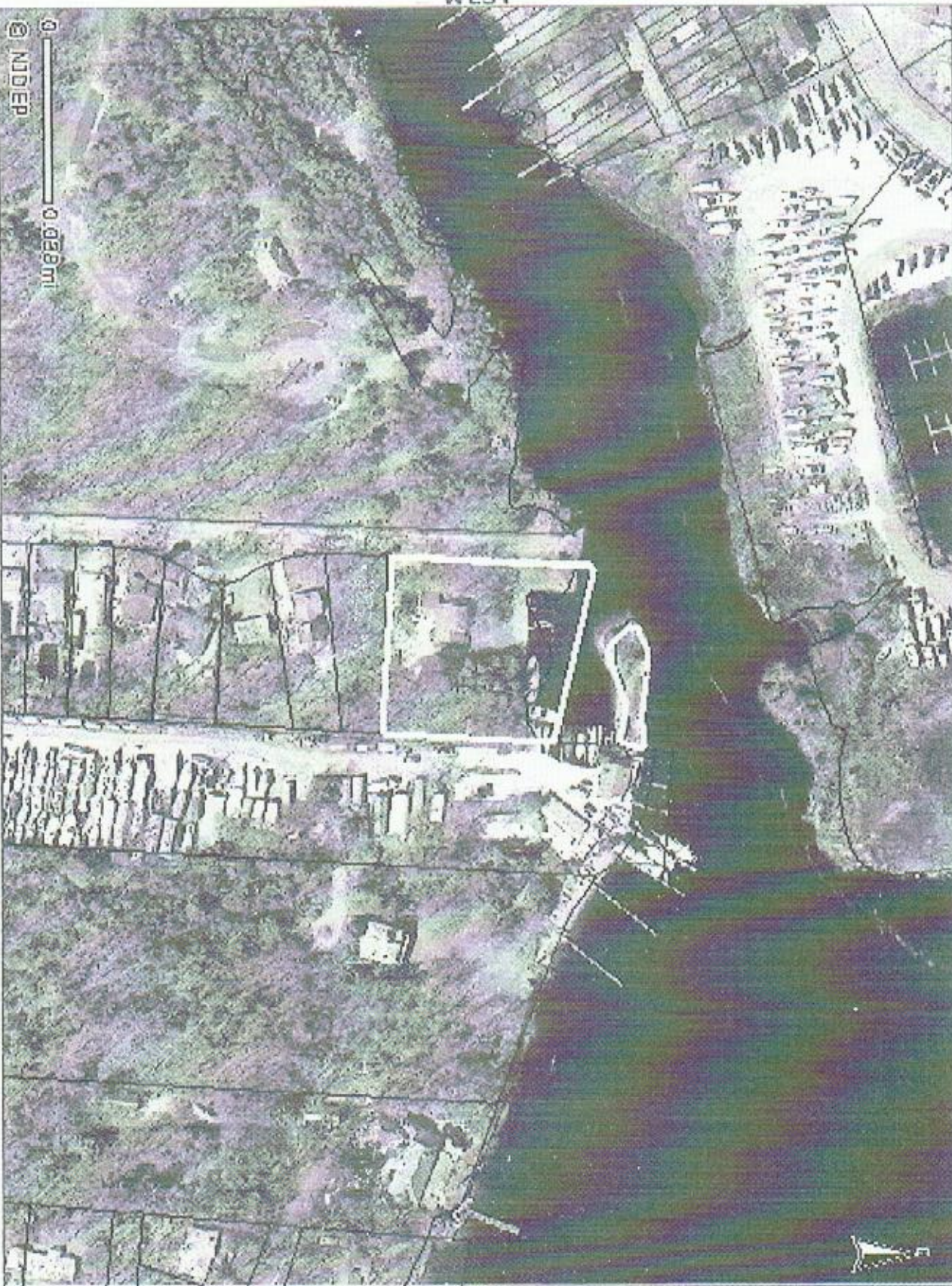
Cc: Diane Cole, Applicant

Jack Mallon, Board Engineer  
Alex Pavliv, Esq., Board Attorney

NORTH

WEST

EAST



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NDBP

SOUTH