

**TOWNSHIP OF BERKELEY
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
FEBRUARY 13, 2013
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. | Central Jersey Construction | BOA# 12-5411 |
| | Variance requested | Use & Bulk Variances, Site Plan |
| | Project: | Construct a larger building expand an existing non-conforming use |
| | Block 837.02 | Lot: 2.02 |
| | Address: Route 9 | Zone: HB |
| | Denial reads: "The applicant proposes to expand an existing non-conforming use by constructing a larger building with a 32 ft. front yard setback where 50 ft. is required". | |
| 2. | Sciara (Bayside Builders) | BOA # 12-5407 |
| | Carried from January 9, 2013 meeting | |
| | Variance requested | Rear setback Bulk Variance |
| | Project: | Construct a 572 s.f. addition |
| | Block: 1561 | Lot: 16 |
| | Address: 234 Teakwood Dr. | |
| | Denial reads: "Applicant proposes to construct a 572 s.f. addition that will leave a 15.74 ft. setback where 20 ft. is required." | |
| 3. | Patricia Mullin | BOA # 12-5203 |
| | Provided an indefinite extension, will re-advertise. | |
| | Variance requested | Front Yard Setback & Exceeding Lot coverage |
| | Project: | Front porch, 2 nd level front deck, rear 2 nd level living space addition and a deck. |
| | Block 1689.06 | Lot 27 |
| | Address: 322 Roberts Avenue, South Seaside Park | Zone: R-31.5 |
| | Denial reads: "Applicant proposes to construct a front porch addition and a 2nd level deck both leaving 14 ft. setback where 20 ft. is required and a rear yard 2 level living space addition and deck. The total construction will increase lot coverage to 43.6% where 35% is maximum allowed". | |

4. **Ada Stevens** **BOA # 11-5395**
-
- | | |
|----------------------------|-------------------------------|
| Variance requested | 6' Solid Fence in front yard. |
| Project | Enclose yard |
| Block 45 | Lots 1267 thru 1271 |
| Address: 203 Seconds Ave.. | Zone: MPRPD |
- Denial reads: **"Applicant proposes to install a 6' high solid fence between a building line and a public street whereas 4' maximum is allowed.**

5. **David Roman** **BOA # 12-5416**
-
- | | |
|----------------------|---|
| Variance requested | Use & Bulk variances |
| Project | Construction of Multifamily residential units |
| Block: 956 | Lot 4 |
| Address: 730 Route 9 | Zones: HB – R-125 |
- Denial reads: **"Applicant proposes to construct attached multi-family residential units that are located in both the HB & R125 zones. Multi-family dwellings are not allowed in the R-125 zone and are a conditional use in the HB zone. The unit will not meet item 6.a of the conditional uses.**

- G. RESOLUTIONS –
I. VOUCHERS
H. ADJOURNMENT



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.

December 19, 2012

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

Re: **BOA# 12-5411**
Applicant: Central Jersey Construction
Application: Site Plan, Use & Bulk Variances
Block 837.02, Lot 2.02
Fronting on N.J.S.H. Route 9
Zone: HB (Highway Business)
EE & L Project No. 12B4533-7C05

Dear Ms. Kazmac:

In accordance with your request, our office has reviewed an application for Preliminary and Final Site Plan with use and bulk variances for the above referenced site. The following information has been submitted for review:

- An amended set of plans entitled "Preliminary And Final Major site Plan For Jersey Rents, Block 837.02, Lot 2.02, Township of Berkeley, Ocean County, New Jersey", consisting of ten (10) sheets, last revised November 15, 2012, prepared by William A. Stevens, P.E., P.P. of Professional Design Services, LLC.
- Application for Preliminary and Final Site Plan approval.
- Preliminary and Final Major Site Plan Application Checklists.
- Application for a 'C' variance (appeal to Zoning Board of Adjustment).
- A 'C' Variance Application Checklist.
- Copy of Ocean County Planning Board minutes, dated October 17, 2012, granting conditional approval.
- Copy of a letter to the Berkeley Township Municipal Utilities Authority, dated September 13, 2012.
- Copy of a letter to the Berkeley Township Sewerage Authority, dated September 13, 2012.
- A copy of a letter to the Ocean County Soil Conservation District, dated September 13, 2012.
- Architectural Plans entitled "Addition & Renovation to Jersey Rents, 248 route 9 South", consisting of seven (7) sheets, dated October 28, 2008, prepared by Dario Architecture/Designs.
- Proof of current payment of property taxes through October 31, 2012.
- A copy of the denial letter dated August 22, 2012.
- Copy of a letter from PDS requesting the checklist waiver items.

A. Completeness

- Based upon our review of the submitted information, 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 **January 9, 2013** meeting agenda.
- 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.

B. Project Overview

The denial letter issued August 22, 2012 by the Zoning Official states; "The applicant proposes to expand an existing non-conforming use by constructing a larger building with a 32 ft. front yard setback where 50 ft. is required".

The existing and proposed uses on the site are the sales and outdoor storage, maintenance and repair of construction equipment which is not a permitted use within the HB zone.

The site is located on the south side of New Jersey State Highway Route 9, approximately 385 ft. east of Sylvan Lake Blvd. It lies within the HB (Highway Business) Zone and comprises an area of 1.53 acres. A 20 ft. wide access easement to Lot 2.03 which houses a cell tower is present adjacent to the west and south boundary lines. The site has been developed with an existing one story framed building which appears to be vacant at present or may be used for storage. A small portion of the site is partially paved with a safety island which is landscaped with two trees and shrubs along Route 9 while the balance of the site appears to be a gravel surface. Much of the pavement in front of the existing building is in very poor condition. The site is currently used for the storage and display of heavy construction equipment. Public utilities provide the site with water and sanitary sewer service.

The southeast corner of the project property is situated adjacent to the Route 9 Residential Zone for which there is no buffer. Other than that all other adjacent sites are within the HB Zone are developed with commercial enterprises.

The site appears to be in Flood Zone "X" (unshaded) which is an area determined to be outside the 0.2% annual chance floodplain. In accordance with the Ocean County Soil Survey, the site appears to be situated on Downer series soils, which are well drained soils with a seasonal high water table expected to be greater than 6 ft. below the surface of the ground. There are no freshwater wetlands on the site.

The applicant proposes to demolish and remove the existing building and construct a larger 5,600 s.f. building with concrete pads on the east, south and west sides of the building. The proposed building has the same front yard setback as the existing building.

Parking facilities for nineteen (19) vehicles is proposed in the front yard area within the New Jersey State Highway Route 9 N.J.D.O.T. desired typical section.

A refuse enclosure with landscaping is provided at the south end of the west concrete pad. As presented, it appears that no new pavement is provided and that existing water and sanitary sewer service lines are to be used. The plans represent that the existing site has two (2) access drives from Route 9. It is proposed to close off the east access drive by extending the safety island and to reconfigure the west access drive.

The applicant is requesting Preliminary and Final Site Plan approval to construct a 5,600 s.f. building to be used for sales, storage and maintenance of construction equipment.

C. Zoning

HB (Highway Business Zone §35-106.2

| Principal Bldg. | Required | Existing | Proposed | Variance Required |
|-----------------------------|-------------|-------------|-------------|-------------------|
| Minimum Lot Area | 15,000 s.f. | 66,747 s.f. | 66,747 s.f. | None |
| Minimum Lot Frontage | 150 ft. | 230 ft. | 230 ft. | None |
| Front Yard Setback | 50 ft. | 32.4 ft. | 32.4 ft. | Yes |
| Rear Yard Setback Structure | 40 ft. | 216 ft. | 162 ft. | None |
| Side Yard Setback | 15 ft. | 34 ft. | 44.6 ft. | None |
| Combined Side Yard Setbacks | 40 ft. | 141 ft. | 151 ft. | None |
| Maximum Lot Coverage | 50% | 3.3%± | 8.4% | None |
| Maximum Bldg Height | 35. ft | <35 ft. | 25 ft. | None |



D. Variances

1. The applicant requires a Use Variance for the expansion of an existing non-conforming use in the HB Zone.
2. The applicant also requires a front yard setback variance; whereas 32.4 ft. is existing and proposed and 50 ft. minimum is required.
3. A variance is required for parking within the front yard area which is prohibited in the HB Zone by Section 35-106.2.f.1.

E. Design Waivers

1. The applicant requires and has requested several design waivers unless otherwise agreeing to comply with the ordinance.
 - a. Section 35-63.1 requires access drive curb radii to be 15 ft.; whereas 13 ft. is provided.
 - b. Section 34-48.a requires buffers along all side and rear property lines abutting a residential zone or use; whereas the southwest corner of the site is adjacent to the R-90 zone and no buffer is proposed.
 - c. Section 35-67.1a indicates that when a development abuts an existing street sidewalk is to be constructed on that side of the street and no sidewalk is proposed.

The Board should be aware that the site adjacent to the east (Lot 1) has sidewalk across its lot frontage on Route 9.

- d. Section 35-63.4.b which requires a 5 ft. wide unbroken landscape strip along all property lines adjacent to parking areas and none is provided along the western property line.
- e. Section 35-48m (Route 9 Corridor Landscaping) requires specific landscaping of an area within 50 ft. of the Route 9 right-of-way which has not been provided; whereas shade trees and shrubs in accordance with Section 35-63.2d has been provided.

Areas for parking, storage of equipment and display of equipment are to be shown and noted on the plan.

F. Review Comments

1. General
 - a. The applicant must be prepared to provide sufficient testimony regarding the granting of any required waivers. Waivers should not be granted unless the Board is satisfied that the waiver is justified and it will not be a detriment to public safety or welfare, and it can be granted without detriment to the public good and Zoning Ordinances.
 - b. The applicant should be prepared to address the Board as to why the proposed building cannot be move further back to provide the required front yard setback and eliminate the need for the variance.
 - c. The applicant should be prepared to describe the present condition of the site and present use of the site.

The Board should be aware that the existing pavement in front of the existing and proposed buildings is in very poor condition. Is the existing pavement suitable for use by the general public? Will any additional pavement be provided?
 - d. The applicant should be prepared to provide testimony as to the use of the proposed parking spaces. Will the spaces be used for public parking or for the display of heavy construction equipment.
 - e. The applicant should provide testimony as to the anticipated amount and frequency of clients and general public visiting the site.
 - f. At present are there any drainage problems on the site?
 - g. What is the section of the existing gravel access road to Lot 2.03. Can the access drive support emergency vehicles?
 - h. The applicant should be prepared to describe an approximate timeline intended for the improvements as shown on the plan and when the project will be improved in accordance with the plans.

Applicant: Central Jersey Construction
 Application: Site Plan, Use & Bulk Variances
 Block 837.02, Lot 2.02
 Fronting on N.J.S.H. Route 9
 Zone: HB (Highway Business)
 EE & L Project No. 12B4533-7C05



- i. The Board should be aware that there are two (2) trees and shrubs within the existing safety island and that the tree branches are growing into the overhead wires on Route 9. These trees and shrubs are not shown on the plan. What will happen to them?
 - j. Will any maintenance activities be conducted outside?
 - k. What methods for preventing soil contamination from vehicles and equipment leaking various fluids are being employed?
 - l. The applicant has provided an Environmental Impact Statement consisting of one paragraph on the plan and does not contain many of the items required by the Ordinance. The statement indicates that the project will not alter any existing stormwater runoff nor remove any existing vegetation and therefore not create any adverse environmental impacts. Inasmuch as the project consists of the redevelopment of an existing fully developed site and as such the Board may deem the statement on the plan adequate.
 - m. The Traffic Impact Statement is on the plan and indicates that it is estimated the proposed development will cause an increase of 50 trips a day or 5 trips per hour for a 10 hour day. How were the 50 trips estimated? What is the existing daily trips for the site and will the additional trips have any impact to the level of service at the intersection of Sylvan Lake Blvd. and Route 9.
2. Plan Amendments
- a. Cover Sheet 1 of 10
 1. General Note #1 is to be amended to include Tax Map Sheet 77.
 2. The zone line in the area map is to be made more defined and noted.
 3. All structures and uses of all properties within 200 feet of the site are to be shown and noted on the area map.
 4. All variances and waivers are to be listed on the plan.
 5. A note is to be added to the General Notes indicating that all parking spaces will be delineated by 4" wide painted white stripes.
 6. The existing project identification sign is to be noted and indicated to be removed.
 - b. Site Plan Sheet 2 of 10
 1. The distance from the parking lot existing curb to the Route 9 right-of-way line is to be dimensioned.
 2. The total width of the safety island should be dimensioned.
 3. The parking requirement calculation on the Site Plan must be amended as it only accounts for 3,518 s.f. of the 5,600 s.f. building.
 4. The limit of existing woods is to be noted on the plan.
 5. Driveways within 100 feet of the site to the north and to the west of the site are to be shown on the plan.
 6. The use of the building adjacent and to the east of the site is to be noted on the plan.
 7. Sight triangle easements are to be shown and noted on the plan.
 8. General Note 1 is to be amended to include Tax Map Sheet 77.
 9. The limits of the existing pavement that is to remain and any new pavement is to be more clearly shown and noted on the plan.
 10. It should be indicated that the existing sign adjacent to the property I.D. sign is to be removed.
 11. A stop sign and stop bar is to be shown and noted at the exit drive from the site.
 12. The handicap parking sign is to be shown and noted on the plan.
 13. A painted cross walk from the handicap parking space to the building is to be provided. It may be a good idea to move the handicap space closer to the building entrance.
 14. Traffic flow arrows are to be provided.
 15. Indicate that the concrete around the building are proposed concrete pads.

Applicant: Central Jersey Construction
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 Block 837.02, Lot 2.02
 Fronting on N.J.S.H. Route 9
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16. The front yard setback line from the Route 9 right-of-way line should be dimensioned.
 17. A note is to be added to the General Notes that indicates that parking spaces are to be delineated by 4" wide white painted stripes.
 18. Any areas of new pavement are to be shown and noted on the plan.
 19. In accordance with the Condition of Ocean County Approval, the project identification sign is to be removed from the NJDOT DTS.
- c. Grading, Drainage and Utility Plan Sheet 3 of 10
1. The location of the water and sewer lines and connection to same are to be shown and noted on the plans.
 2. The location of the existing fire hydrant in front of Lot 1 is to be shown and noted on the plan. The existing water main in Route 9 should also be shown.
 3. Additional spot elevations indicating top of curb and gutter elevations on Route 9 and along the parking lot curb that forms the safety island must be provided. Additional spot elevations which show positive drainage for the site must be provided. It appears that there are low areas between the parking lot curbing and the front of the existing building.
 4. An easement is to be provided for the existing onsite sanitary sewer.
 5. Invert elevations are to be provided for the existing sanitary sewer.
 6. The limit of existing woods should be noted on the plan.
- d. Landscaping Plan Sheet 4 of 10
1. The existing trees and shrubs in the Route 9 safety island should be shown and noted on the plan and their disposition should be noted.
- e. Lighting Plan Sheet 5 of 10
1. It appears that additional lighting for the parking spaces adjacent to Route 9 should be provided.
- f. Construction Detail Sheet 6 of 10
1. A detail for the concrete pad around the proposed building is to be provided.
 2. An onsite pavement detail and Route 9 pavement repair detail is required.
 3. A parking space layout detail in conformance with Section 35-63.1.h of the Ordinance is to be provided.
 4. A handicap parking space with access aisle detail is to be provided.
 5. A stop sign detail including and installation details of same is to be provided.
 6. A detail for a painted handicap symbol should be provided.
 7. If existing water and sanitary services are being used details of same are to be provided and details of connection of same should be provided.
 8. If the project identification sign is within the sight triangle it will have to be raised.
- g. Soil Erosion & Sediment Control Plan, Notes and Details Sheets 7 & 8 of 10
1. These plans, notes and details are to be amended in accordance with comments from the Ocean County Soil Conservation District.
- h. Stormwater Management Plan – Sheet 9 of 10
1. The time of concentration flow paths on the pre and post development drainage area maps are to be amended to reflect the actual flow paths.
3. Drainage

The stormwater calculations which are on Sheet 1 of 10 of the plan is a brief report that provides a definition for impervious surfaces as stated in N.J.A.C. 7:8. It states that an impervious surface is a surface that has been covered with a layer of material so that it is highly resistant to infiltration by water. It is shown by this definition



that this project will not increase impervious surfaces on the subject property. It is also indicated that the project would only disturb 0.3 acres. This would not be accurate if pavement of additional areas would be required. However even if additional areas are to be paved, it appears that less than one (1) acre of total disturbance would occur and therefore this project would not be classified a major project and as such stormwater management required by N.J.A.C. 7:8 is not required. However positive drainage for the site must be shown and an access/drainage permit from NJDOT is required.

H. Conditions and Recommendation

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

1. The applicant providing revised plans as indicated above to the Zoning Board Engineer for review and as otherwise required or discussed at the public meeting.
2. The applicant certifying that the proposed construction will not encroach into existing easements (i.e. shade trees, utilities, drainage, etc.) without proper consent from the Township and/or other agencies or parties involved.
3. The applicant providing additional drainage and runoff drawing and/or plans and drainage calculations which verify that there will be no drainage impact to adjacent property owners.
4. The applicant providing any required contributions to the Drainage Trust Fund.
5. The applicant submitting payment of any and all outstanding professional review fees of the Board and the Township.
6. Payment of all COAH Development Fees, where required.
7. The applicant providing all required plans necessary to show compliance with all required Building Codes, to the Building Department at the time of the permit application, such as but not necessarily limited to the following:
 - a. The applicant submitting for a grading permit in accordance with §11-1.5.
 - b. The applicant submitting signed and sealed architectural plans of the proposed structure in accordance with all testimony and plans provided at the public hearing, as well as applicable building codes.
 - c. Proof of approval and/or waivers, if required from all agencies having jurisdiction including but not limited to the Ocean County Planning Board, NJDOT, Ocean County Soil Conservation District, Ocean County Board of Health and the Berkeley Township Sewerage Authority.

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: Central Jersey Construction, Applicant
John Doyle, Esq., Applicant's Attorney
Professional Design Services, LLC, Applicant's Engineer
Anna Wainwright, Board Planner
Alex Pavliv, Board Attorney
File

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300 Penhorn Avenue, 3rd Floor
Secaucus, NJ 07094
(201) 624-2137
(201) 624-2136 (fax)

MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, P.P., A.I.C.P., ZB Planner *AW*
PLANNING REVIEW

DATE: December 19, 2012

RE: Central Jersey Construction-Review #1
Application: Use Variance, Preliminary & Final Site Plan
Block 837.02, Lot 2.02
Address: 248 Route 9
Zoning District: HB - Highway Business Zone
Plan Title: Preliminary & Final Major Site Plan
Prepared By: William Stevens, P.E., P.P.
Dated: September 11, 2012, revised 11/15/12
BOA #12-5411
Our File: 1506-Z-143

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

Zoning Requirements:

HB Highway Business Zone §35-106.2 & §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 | 66,747 SF | 66,747 SF | None |
| Minimum Lot Frontage | 150 FT | 230.08 FT | 230.08 FT | None |
| Front Yard Setback | 50 FT | <u>32.40 FT*</u> | <u>32.40 FT*</u> | <u>*Variance Required</u> |
| Rear Yard Setback Structure | 40 FT | 216.1 FT | 162.68 FT | None |
| Side Yard Setback | 15 FT | 34.11 FT | 44.64 FT | None |
| Combined Side Yard Setbacks | 40 FT | 141 FT | 150.97 FT | None |
| Maximum Impervious Coverage | 30% | <u>>30%*</u> | <u>>30%*</u> | <u>*Variance Required</u> |

* Variance Required

RECEIVED

DEC 29 2012

ERNST, ERNST & LUSSEN

A. PROJECT OVERVIEW:

The denial letter issued August 22, 2012 by the Zoning Official states: *Applicant proposes to expand an existing non-conforming use by constructing a larger building with a 32' front yard setback where 50' is required.*

The applicant requires a use variance or "d(2)" variance for approval for the expansion of a non-conforming use, which appears to be a "construction equipment-sales and retail, construction equipment outdoor storage, construction equipment maintenance & repair" business. The applicant is also requesting preliminary and final major site plan, however, only minor site improvements are proposed.

The site is located at the Route 9 entrance to the Township, just below the proposed Town Center. The site contains an existing business which is almost completely barren of landscaping or any of the general site improvement standards as required by the Township. The site has some common ownership with the adjacent Lot 2.01, and the use is proposed as an "expansion of the adjacent "Jersey Rents" site". The site presently contains multiple pieces of construction vehicles and/or equipment parked throughout the site and along property lines, on a gravel/dirt, uneven asphalt surface. The property is located within the HB Highway Business Zone of the Township which prohibits industrial uses, and parking, storage or display of equipment and vehicles in the front yard area.

The applicant is proposing to demolish the existing one-story structure and construct a 5,600 square foot, 34 foot high, new building in its place. The property is bounded by the R-90 Residential Zone to the rear. The applicant has requested approvals for variances and Preliminary and Final Major Site. The applicant has requested three design waivers, however, several other waivers are required, as described below.

B. VARIANCES:

1. The Applicant is requesting that the Board grant a use variance to create "an expansion of the adjacent "Jersey Rents" site". The applicant must clarify to the Board if the proposal is for an accessory use on an adjacent property, or are the uses to be combined. Testimony must be provided which clarifies the requested "d" variances. The Applicant must first provide professional testimony to the Board regarding the history of the pre-existing conditions at the site that run contrary to the requirements of the ordinance, such as the unimproved parking and storage areas, parking in the front yard area, and outdoor storage of vehicles and equipment.
2. The Applicant should provide professional testimony to the Board regarding the "special reasons" as prescribed in the MLUL for the granting of a "d(2)" variance to expand the use(s). 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. The Board must also be satisfied that the variances can be granted without substantial detriment to the public good or the Municipal Zoning Ordinance and/or Township Master Plan.

Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a variance request if:

- d. In particular cases for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit: (1) a use or principal structure in a district restricted against such use or principal structure, (2) an expansion of a nonconforming use,...
3. The following "c" variances are also required:

§35-95 - Front Yard Setback – Required 50 feet, Proposed 32.40 feet. A variance is required.

§35-106.2(e) – The maximum impervious coverage in the HB Zone shall be thirty (30) percent. The stormwater calculations provided by the applicant indicate that the existing gravel parking surface is a compacted surface that meets the definition of an impervious surface. The maximum impervious coverage exceeds the maximum allowed. A variance is required.

§35-106.2(f)(1) – There shall be no parking or outside display or storage of materials or merchandise in a required front yard area. Parking is proposed, and display already exists. Variances are required.

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

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).

The following waivers are required:

Requested Waivers:

§35-63.1- Curb radii to be at least 15 FT. minimum, 13 FT. proposed.

§35-48.D – Ten FT buffer required to residential Zone, none provided.

§35-63.4.B – 5 FT unbroken landscape strip required along western property line, none provided.

Additional Required Waivers:

§35-63. – Off Street Parking In all zones and in connection with every industrial, commercial, institutional, recreational, residential or any other use, there shall be provided parking spaces in accordance with the following requirements and parking lot standards ...

§35-63.1(e) – All parking areas and driveways shall be paved and curbed. Parking and driveways (circulation aisles, display and storage areas) are proposed gravel or existing pavement. Existing conditions of the site are uneven asphalt, dirt, gravel, etc. Only minor improvements appear to be proposed.

§35-63.2-4 – Where parking is permitted between the front building line and the street a safety island is required, a distance of 15 feet, raised above the parking area. None is provided.

§35-67.1- Sidewalks are required. None are proposed.

§35-48 – Landscaping

§35-48(b) – In conjunction with commercial or industrial uses, all areas of a lot not occupied by buildings, pavement or other surfacing and other required improvements shall be landscaped by the planting of grass and/or ground cover, shrubs and trees.

§35-106.2 HB Highway Business Zone

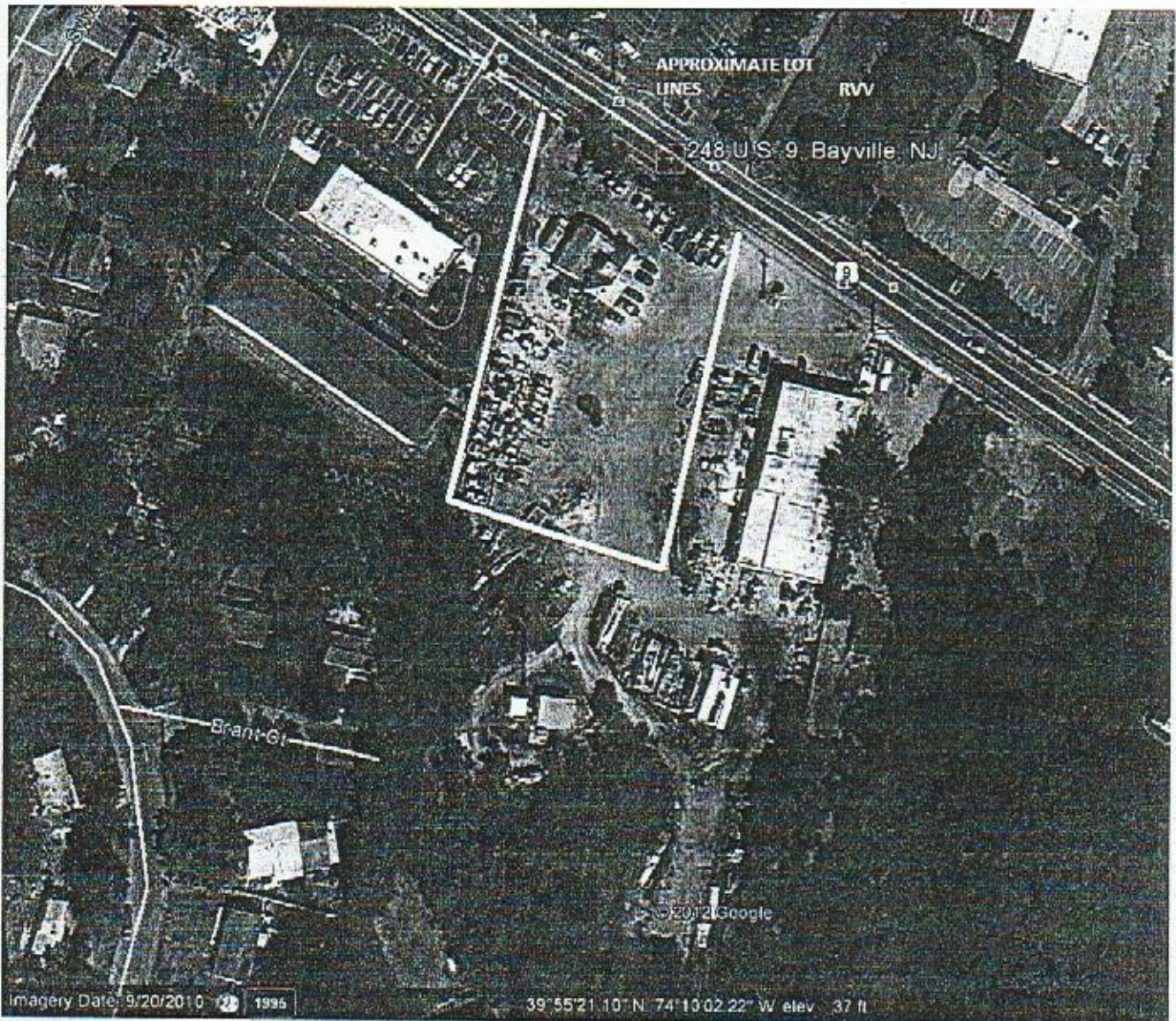
§35-106.2(f)(5) – (New Ordinance) – Landscaped areas shall be provided along the highway edge in accordance with Section 35-48.m.

m. Route 9 Corridor – In addition to the applicable requirements of this section the following standards shall apply to all properties fronting on NJ Route 9 and located in the Highway Business (HB) zoning district. They shall apply specifically to the area within fifty (50) feet of the highway right-of-way line. All subdivision and site plan applications involving such properties shall provide a landscaping plan that demonstrates compliance with these standards. If unique site-specific circumstances such as wetlands, existing vegetation, or unusual lot configuration preclude the installation of any of the prescribed landscaping elements, the applicant shall provide an alternative plan that incorporates as many elements as is feasible. In all cases, however, the sidewalk element must be provided.

Ordinances §35-48.m(1-9) – which specifically describes the requirements for a 50 foot wide landscaped pedestrian corridor have not been met.

§35-55.4 – Shade Tree Easement – a six (6) foot wide shade tree and utility easement is required. None is provided.

- C. **PRELIMINARY AND FINAL SITE PLAN** – The applicant has requested preliminary and final major site plan approval. Requirements for site improvements such as paved and striped parking areas, and landscaping, have not been met. We defer to the Board engineer on issues of site plan provisions, including stormwater management and traffic impacts.



D. **GENERAL REVIEW COMMENTS:**

1. The applicant must clarify the division of uses on the two adjacent sites, and reasons why the two sites are not combined.
2. The applicant should be prepared to describe the existing conditions on the site and the existing use of the site. There are multiple site conditions which exist, such as uneven pavement, broken curbing, uneven surfaces, building condition, random parking, random equipment/junk outdoor storage, etc., which should not be continued as a result

of this approval. Testimony regarding the extent of improvements and site cleanup should be provided.

3. The applicant should provide testimony regarding why the building cannot be adjusted to meet the front yard setback. The new ordinances call for a 50' landscaped visually enhanced pedestrian corridor, and compliance with the setback will help set the precedent for the future improvements anticipated in the ordinances and Master Plan. Should the Board grant the waivers required for this required landscaped pedestrian corridor along Route 9, some provisions might be met such as alternate areas for parking which may allow for a modified version of the required pedestrian corridor.
4. The application indicates the demolition of the existing structure. The applicant should be prepared to describe if the requested use is to be as an accessory to the adjacent use, or a standalone use.
5. The proposed signage appears to be in compliance with the ordinance, however, specific dimensions and materials should be provided for the proposed building sign in order to verify compliance.
6. The applicant is requesting waivers for buffers and landscaping along the northerly property line which abuts a new shopping center, and a residential use. The existing disorderly condition of the site, should not be continued, and if similar conditions are anticipated to continue outside of the proposed structure, the Board may wish to require landscaping/screening and/or a solid fence along that property line.
7. The applicant must satisfy both the negative and positive criteria in accordance with the requirements of the Municipal Land Use Law and specifically as provided above in Section B "Variances". Variances can only be granted if the applicant has met their burden of proofs as described above and if those variances can be granted without substantial detriment to the public good and without substantial detriment to the intent and purpose of the zone plan (ordinances) and Township Master Plan.

E. 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, Township Building and Engineering Departments, etc., if required.
2. The Applicant certifying that the proposed improvements 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.

Page 7

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

ARW/ktr

cc: J. Mallon, P.E. – Board Engineer
A. Pavliv, Esq. – Board Attorney
Central Jersey Construction – Applicant
William Stevens, PE – Applicant's Engineer
John P. Doyle, Esq – Applicant's Attorney



Ernst, Ernst Lissenden

A New Jersey Corporation

Certificate of Authorization 24GA27927500
Consulting Engineers, Planners & Surveyors
52 Hyers Street, P.O. Box 391 • Toms River, NJ 08754
Telephone: 732-349-2215 • Fax: 732-349-4127
Website: www.eelengr.com
January 30, 2013

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

Re: **BOA #11-5395**
Applicant: Ada Stevens
203 Second Avenue
Application: Construct a 6 ft. High Fence Within
A Front yard Area
Block 45, Lots 1267-1271
Fronting on Second Avenue
Zone: MPRPD Zone
EE & L Project No. 12B4533-7S04

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 the same:

The denial letter issued January 4, 2012 states the applicant proposes to install a 6 ft. high fence between a building line and a public street where 4 ft. maximum is allowed.

A. Completeness

1. The applicant has submitted the following information:
 - A plan entitled "Final Survey of Tax Lots 1267 thru 1271 – Tax Block 45 (reference Tax Map Sheet No. 29.01) Township of Berkeley, Ocean County, New Jersey", prepared by Professional Design Surveying, LLC, dated July 29, 2011.
 - A 200 ft. Radius Map and a certified list of property owners within 200 ft. of the property.
 - An application and application checklist.
2. 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 February 13, 2013 meeting agenda.
3. 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.

B. General Comments

The property is located at the northwest corner of Second Avenue and Eighth Street. The property lies within the MPRPD Zone and comprises an area of 10,000 s.f. or 0.23 Ac. The site contains a two story frame dwelling with a 20 ft. wide bituminous asphalt driveway on to Second Avenue.

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

PRINCIPALS

John A. Ernst, Jr., (1909-1987)
John A. Ernst, III, (Retired)
George C. Lissenden, Jr., (Retired)
John J. Mallon, P.E., C.M.E., P.P.
Robert J. Romano, P.E., C.M.E., P.P.
John N. Ernst, P.E., C.M.E., P.P.
Carl P. Werner, L.S., P.P.
Harold Mathis, Jr., L.S., P.P.

Re: BOA #11-5395
Applicant: Ada Stevens
Application: Construct a 6 ft. High Fence Within
A Front yard Area
Block 45, Lots 1267-1271
Fronting on Second Avenue
Zone: MPRPD Zone
EE & L Project No. 12B4533-7504

Page 2 of 2



The applicant proposes to construct a 6 ft. high fence within the front yard area along Eighth Street approximately 5 ft. from the edge of pavement which appears to be on the right of way line. The proposed fence will enclose the rear yard and approximately one half of the side and front yard on Eighth Street.

C. Variances Requested and Items of Discussion

1. A Variance is required for the construction of a 6 ft. high fence in a front yard area; whereas 4 ft. is the maximum allowed.
2. The applicant does not indicate in the application but a variance appears to be required for a solid fence; whereas a minimum of 50% open is allowed
3. The applicant must provide testimony and proofs supporting the granting of the variance.
4. How far off all the property lines will then fence be constructed?

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, Building Department, Fire Department, Health Department, and Engineering Departments, etc., if required.
2. The Applicant certifying that the proposed fence does 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. In as much as spot elevations showing positive drainage for the property we recommend that the Grading Plan requirements be waived by the Township Engineer.

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
Ada Stevens, Applicant
file



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.

January 22, 2013

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

Attn: Melissa Kazmac, Board Secretary

Re: **BOA # 12-5416**
Applicant: David Roman
Application: Use and Bulk Variances
Block 956, Lot 4
Fronting on: NJSH Route 9
Zone: HB & R-125
EE & L Project No. 12B4533-7R04

Dear Ms. Kazmac:

In response to my review letter of November 7, 2012 which deemed this application complete and the Board's Hearing on November 14, 2012, the applicant has submitted amended plans, revised to January 11, 2013 with site photographs. A boundary and topographic survey, architectural plans, a 200 ft. radius map with a certified list of property owners, a traffic impact analysis and application checklist was previously submitted.

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

A. General Comments

The property is located on the west side of New Jersey State Highway Route 9, approximately 520 feet south of Bay Boulevard projected. Approximately 98% or 10.58 acres of the site lies within the R-125 Zone while the remaining 2% or 0.19 acres lies within the HB Zone. The site contains a 1½ story framed dwelling with a gravel driveway and a second 1 story framed dwelling. Both dwelling units front on Route 9 at different locations and are separated by existing Lot 5 (110 ft. ±). The 1 story dwelling has 43 ft. of frontage on Route 9 in the HB Zone, while the 1½ story dwelling has approximately 148 ft. of frontage on Route 9 in the R-125 Zone. There are several encroachments from adjacent property owners (Lots 6, 9 & 11) consisting of planters, a timber playset, fences and a gravel driveway along the north boundary back to adjacent Lots 14 and 15. Most of the gravel driveway is within an easement. The majority of the 10.78 acre site appears to be densely forested.

The site lies within Flood Zone "X" (unshaded) which is an area determined to be outside the 0.2% annual chance floodplain. In accordance with the Soil Survey of Ocean County most of the area of development is situated on Downer series soils which are deep well drained soils with the seasonal high water table expected to be greater than 6 ft. from the surface of the ground. A very small sliver along the northwestern boundary is situated on Lakehurst series soils which are moderately well drained or somewhat poorly drained soils in depressed areas with the seasonal high water table expected to be 1.5 ft. to 3.5 ft. below the surface of the ground. Freshwater wetlands do not appear to be present on the site. However wetlands



associated with Potter Creek located by an NJDEP aerial on the plan are situated 210 ft. (scaled) from the northwestern boundary of this site.

The application remains proposing to construct ten (10), two (2) story; eight (8) units per building, age restricted, garden apartments; a 3,000 s.f. storage building; parking; drainage and stormwater management facilities. The project will be serviced by public water and sewer. All of the above is situated in the R-125 Zone.

Amendments to the plans are as follows:

1. A Use Variance for the dwelling unit on Route 9 is no longer necessary as the applicant now proposes to have it removed and provide an emergency access drive on that lot which the applicant represents providing a second access to the project site.
2. A subdivision application for the project is no longer required.
3. As indicated in General Note #13 the project will be restricted to persons 48 years of age or older and no school aged children will be allowed. A deed restriction to accommodate this should be required.
4. The parking layout has been amended to reduce the number of parking spaces to 156 spaces which is what is required. Previously 169 spaces were proposed.
5. The parking lot layout has been provided with curve radii data.
6. Concrete curb and sidewalks along Route 9 frontages have been provided eliminating the need for those waivers.
7. Five (5) mail boxes are proposed located in islands within the parking lot.
8. General Note #14 indicates landscaped areas will be irrigated.
9. General Note #15 indicates trash pick up will be by private carter.
10. It is indicated that the applicant will maintain the site during snow removal and snow will be stockpiled in open areas that drain off to the stormwater management ponds.
11. General Note #18 indicates that offsite wetlands are to be located at site plan application.
12. Five (5) dumpsters have been removed in order to provide areas for mail boxes. Nine (9) dumpsters originally provided four (4) are now proposed. Are four (4) dumpsters adequate for 80 dwelling units?

B. Variances/Waivers

1. The following variances are required:
 - a. A use "d" variance is required for the construction of 10 multi-family garden apartment buildings containing 8 units each as a multi-family use is not permitted in the R-125 Zone.
 - b. A Density (d) variance is required as 7.4 dwelling units per acre is proposed; whereas 3.5 dwelling units per acre is allowed.
 - c. A Bulk variance (c) is required for the portion of the lot that is in the HB Zone. A variance for lot frontage is required; whereas 150 ft. minimum is required and 43.38 ft. is provided.
 - d. Technically a (c) variance for not meeting the minimum lot area of the HB Zone may be required as the zone line limits the lot area of the lot in the HB Zone.
2. General Note #8 indicates that the intention of the plan is to conform to the R-MF Multi-Family Zone. The following are non-compliances from the R-MF Multi-family Zone:



- a. Section 35-96.4.a.2(b) requires two (2) entrance – exit roads form garden apartment projects; whereas one (1) entrance – exit drive is provided. A 24 ft. wide emergency access drive has been added. This section also requires entrance – exit drives to be 40 ft. in width; whereas separate entrance – exit drives 20 ft. in width are proposed.
 - b. Section 35-96.4.a.2(g) requires refuse enclosures to be located away from the fronts of buildings; whereas all are located in parking areas which are in the front of the buildings.
 - c. Section 35-96.4.a.2(h) requires **in addition** to any storage within dwelling units, two hundred (200) cubic feet of storage area for each dwelling unit be provided in a convenient, centrally located area **within the building**; whereas none are provided. It should be noted that there is a separate 3,000 s.f. storage building in the western portion of the site. However it is not noted if this is for storage of maintenance equipment for the site or for the residence. In any event it is not centrally located. In correspondence, the applicant's engineer has indicated that 200 c.f. of storage would be provided in each unit.
 - d. Section 35-96.4.a.2(j) requires each multi-family development to provide a recreational area of 1,000 s.f. for each twelve (12) units; whereas none is provided.
3. The following waivers are required:
- a. Section 35-63.1.d indicates in parking lots greater than 100 spaces no parking is permitted along the main access drive; whereas 82 spaces are along what technically is the main access drive.
4. 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. The Board Planner will provide detailed review of the proofs for "d" variances.
5. The Board must also determine if the "c" variance can and should be granted or consider this at Site Plan.
- 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.
6. 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.

C. Items if Discussion

1. Testimony regarding traffic impacts should be provided. (See review of Traffic Impact Analysis).
2. Testimony as to the net density (driveways and parking areas not included) of the project should be provided.



3. In as much as the vast majority of the site appears to be densely wooded the Board should determine if an Environmental Impact Statement should be provided for this application. The applicant has indicated that this will be provided at the time of Site Plan Application.
4. Are the ponds infiltration basins or infiltration/detention basins or wet ponds?
5. Testimony should be provided as to the suitability of the soils to support the proposed basins?
6. The number of proposed parking spaces meets the requirements of R.S.I.S.; whereas 156 spaces minimum is required and 156 spaces are provided.
7. Is the density of the vegetation thick enough to provide buffer to the residential dwelling units on the adjacent subdivision to the south? Testimony and photographs should be provided.
8. The Board should determine if the off-site wetlands line which has been located by an N.J.D.E.P. aerial should be more definitively located. The applicant indicates that these wetlands will be located and an L.O.I. obtained at the time of Site Plan Application.
9. Do sewer and water have the capacity for the use?
10. Testimony regarding the lack of recreation facilities should be provided.

D. Plan Review

- a. The HB Zone requirement under provided should be amended on Sheet 1.
- b. Both "d" variances and "c" variances should be listed under variance required on Sheet 1.
- c. Number (2) under "waivers required" should be eliminated.

E. Traffic Impact Analysis

Existing condition traffic volumes were conducted using automatic traffic recorders for a period of ten (10) days. The morning peak hour was found to be between 8:00 am & 9:00 am and the afternoon peak hour was found to be between 5:00 pm & 6:00 pm. The morning peak hour volumes was found to be 651 northbound and 490 southbound for a total volume of 1,141 while the afternoon peak volumes were 752 northbound and 701 southbound for a total volume of 1,453.

Trip generation for morning and afternoon peak hours for 80 age restricted apartments and 22 single family homes was performed and compared. The 22 single family homes generate more peak hour traffic than the 80 age restricted apartments. The applicant indicates that the zone permits 22 single family homes. How was this determination made? A yield map showing 22 conforming lots with areas for the basins and any buffers should be provided.

The report indicates that site access onto Route 9 will operate at a level of service "C" during the morning peak hour and a level of service "D" during the afternoon peak hours both of which are acceptable levels. Left turns onto the site from Route 9 will operate at a level of service "A" during both the morning and afternoon peak hours. **Will the project have any impact on nearby Route 9 intersection? Will turning lanes and by pass lanes be provided along Route 9? Has the applicant met or received a determination from the NJDOT?**

The report concluded that the 80 age restricted apartments will generate less traffic than the permitted 22 single family units. In addition, the gap study conducted during peak hours indicates that substantial excess capacity will be available at the site driveway to process existing traffic movements.

F. Conditions and Recommendations

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

Re: BOA # 12-5416
Applicant: David Roman
Application: Use and Bulk Variances
Block 956, Lot 4
Fronting on: NJSH Route 9
Zone: HB & R-125
EE & L Project No. 12B4533-7R04

Page 5 of 5



1. The applicant must apply for and receive preliminary and final major 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. 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 site plan application.
2. The Board should specify the maximum number of units to be allowed.
3. Should the Board waive the EIS for the use variance, an EIS should be submitted for the Site Plan.
4. The Board should set a maximum number of units approved subject to Site Plan approval.

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: David Roman, 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

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300 Penhorn Avenue, 3rd Floor
Secaucus, NJ 07094
(201) 624-2137
(201) 624-2136 (fax)

MEMO: Berkeley Township Zoning Board of Adjustment

FROM: Anna Wainright, PP, AICP.
Zoning Board of Adjustment Planner 

DATE: January 14, 2013

RE: Brower/Roman
RIVERBAY LANDINGS
PLANNER REVIEW #2
Density/Use/Bulk Variances
Block 956 Lot 4

Address: 730 Route 9

Zoning Districts: R-125 Residential Zone

Proposed Emergency Access HB - Highway Business

Plan Title: Use Variance Plans for "Riverbay Landings", Block 956,
Lot 4; Prepared By: William Stevens, P.E., P.P.; September 20, 2012
(2 sheets) Revised 1/11/13; Survey prepared by Richard S. Korecky,
Jr., PLS, 8/30/12.

Architectural Plans prepared by Dario Architecture, dated 9/24/12
(3 sheets).

Traffic Report prepared by McDonough & Rae Associates, Inc.

BOA #12-5416

Our File: 1506-Z-149

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

The Applicant previously appeared before the Board at the November 14, 2012 regular meeting of the board. At that time there were several comments and concerns heard from the Board as well as some of the neighboring residents. The Applicant requested an opportunity to make some revisions to the proposal in response to those concerns. At the time the Board denied that request and denied the use variance. Upon reconsideration, the Board determined that it would be more reasonable to allow the applicant to return to the Board with any revisions or changes they believed might address some of the concerns heard at that first hearing. This review has been revised to reflect the revised submission now proposed by the applicant. Below is a summary list of significant changes to the proposal.

1. The application no longer requires a use variance to allow the existing home on Route 9 to remain, it will be removed and an emergency access is proposed on that lot for a second means of egress. A subdivision is no longer required.
2. The age restriction to be imposed on the property is a minimum of 48 and older, with no school age children allowed.
3. A Cul-De-Sac turnaround has been added to the main drive aisle.
4. Parking layout has been revised and number of spaces reduced.

The Applicant has applied to the Board to obtain a use variance and any other variances required for construction of an 80 unit age-restricted multi-family development consisting of ten (10) two story residential structures, one 3,000 square foot storage building, 156 parking spaces, two stormwater basins and other associated improvements, on approximately 10.77 acres located within the R-125 Zone. Multi-family dwellings are not permitted within the R-125 Zone, where approximately 36 single family dwellings would be permitted. The Applicant also requires a "d" density variance for 80 dwelling units where 36 would be permitted. The 10.77 acre site presently contains two single family dwellings located on two separated frontages on Route 9. The lot is predominately a forested property which slopes down toward the most northerly point.

The Applicant is proposing the development to be conforming to the R-MF Multifamily Zone requirements.

The Applicant has chosen to "bifurcate" the application requesting the use first, and all other variances, and waivers, without providing all of the required information for site plan approvals. The applicant is permitted to apply in this manner; however, the Board may determine that they require additional details or information in order to make an informed decision. Should the Board determine that the use, density, and other variances are appropriate, the applicant is required to return to the Board for site plan approvals, and any approvals which the Board may grant to the applicant should be conditioned upon a return to the Board with the site plan and subdivision application in a timely manner to be determined by the Board.

Use and Density "d" Variances:

The Applicant requires two (2) different "d" variances. One for the proposed non-permitted multi-family use (d-1) in a zone which does not permit it; and One for a density of 80 dwelling units where 36 are permitted. The variances should be discussed separately and professional testimony must be provided to the Board regarding the "special reasons" as prescribed in the MLUL for the granting of "d" variances. "D" variances require an "enhanced" burden of proofs and it is the applicant's obligation to satisfy the Board that the "enhanced" burden is met on both "d" variances. All "D" variances require five (5) affirmative votes. 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. Those variances depend on the standards that the Board determines are appropriate to be considered with this use.

Should the Board agree to consider other "c" variances with the application, the following criteria would apply.

- 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 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 area would remain R-125 single family residential with a medium density requirement of one unit per 12,500 square feet of area. The Master Plan also indicated that the R-MF Zone was "restricted to existing multi-family developments in the Township with the exception of those that are located in a town center or corridor node." This area of the R-125 Zone is located adjacent to the CN-B corridor node, and is separated from the greatest portion of that zone by a forested wetlands corridor. However, all multi-family developments within the Town Center and corridor nodes, require a stringent review for amenities and landscaping, along with a mixed use commercial combination of uses. The applicant should be prepared to provide professional testimony with regard to reconciling this inconsistency with the Master Plan.

The following additional "c" variances appear to be required from the R-MF standards for multifamily uses:

1. §35-96.4 2- R-MF Multi-family

- (b) Driveways require a pavement width of at least forty (40) feet. There shall be not less than two (2) exit-entrance roads to each garden apartment project. The driveway widths do not comply and there is only one entrance/exit. *An emergency access has been added.*
- (g) Garbage and refuse storage and collection areas shall be screened and located away from the fronts of buildings. All refuse areas are in front of the buildings.
- (h) Storage areas in addition to areas within units must be provided at 200 cubic feet per unit, or 16,000 cubic feet. The applicant shows a "storage building" of 3,000 square feet, but does not indicate the use of the structure or compliance with this requirement.
- (i) Building offsets of 4 feet are not provided.
- (j) Each development shall provide a recreation area at a standard of one thousand square feet for each twelve units, none is provided.

A. PROJECT OVERVIEW

The proposed project is located predominately within the R-125 Zone adjacent to a forested wetlands corridor to the northwest, and residential uses along the northerly boundary. To the southwest there are residential subdivisions, and there exists a mix of residential and commercial uses to the east along Route 9. The proposal is for 80 age-restricted one and two-bedroom apartments in 10 separate buildings, with 156 parking spaces, and a 3,000 square foot storage building. The applicant is proposing a 3.24 acre "preservation area" in the westerly corner of the property, which includes a 60 foot wide buffer to uses in the south. To the north on the property line with the forested wetlands, the applicant is proposing a 50'± setback to buildings, but only a 10 foot vegetated buffer. To the north adjacent to the existing residential uses, the applicant is proposing a 50' "buffer" area. The project contains two ponds which we assume will be part of the stormwater management of the site. The project has one entrance which tapers from 25' wide to two 20' one-way in and out access roads.

The plans now include a gravel emergency access drive where an existing home will be removed.

B. GENERAL REVIEW COMMENTS

1. The applicant must satisfy the Board that they have met the burden of proofs required for all of the requested variances.
2. The applicant indicates that the project will be for "age-restricted" occupancy. However, the site is designed with more parking than what is required, and generally, age-restricted uses are modified to allow for less parking due to the lesser need. Assuming that the "age-restriction" is 55 and older the Applicant should provide testimony in this regard and regarding what provisions in this application or the law that would require the continued "age restriction" stipulation. *The Applicant indicated that the age restrictions would be in the form of a "deed restriction" which should be a condition of any approval.*
3. The applicant should provide testimony regarding the limited provisions for recreation on the site. There should be additional recreational facilities added to the site.
4. *The applicant indicates in correspondence that the basins will provide both infiltration and detention. Further, that pond construction will require the use of liners to hold water. Testimony must be provided which clarifies if the basins will be "ponds" or dry basins.*
5. *The applicant indicates in correspondence that there will be 200 cubic feet of storage space provided within the units. Testimony which clarifies what this will be must be provided.*
6. The Applicant should provide testimony regarding the "management" of the site, such as how the property will be maintained, rented, how garbage will be picked up, how snow will be removed, and what safety and security measures will be provided.
7. The Applicant should provide testimony regarding the "preservation area" and whether or not there will be a conservation easement on those areas.
8. The Applicant should provide testimony regarding the single family access "easements" in the north of the property and whether or not it is their intention to grant formal easements to these existing homes. Easements should be added to the plans.
9. *The Applicant previously testified that the existing encroachments by homes to the north and south would be permitted to remain. A description of these encroachments and testimony about how this will be allowed must be provided (easement or deed restriction).*
10. The Applicant should provide testimony and descriptions of the submitted architectural plans. The plans should be corrected to include square footages, dimensions and total bedroom/unit counts. *Plans which indicate the 200 cubic foot of storage space should be submitted.*

11. The Applicant is proposing to remove 70% of the trees on the site, and has not provided any information about how this site will be landscaped and trees replaced. Testimony should be provided regarding compliance with the Township's Tree Removal ordinance and intentions to comply.
12. The Applicant will require review from all outside agencies including CAFRA. Testimony should be provided regarding compliance with CAFRA regulations, more specifically lot coverage, and disturbance within or around any wetlands buffers.
13. The Applicant should provide testimony regarding the submitted traffic impact report. We defer to the Board engineer for comments and recommendations on this item.

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. Submission and approval of a Major Site Plan application provided within a timely manner determined by the Board.
2. Provisions for additional recreational facilities and pedestrian circulation plans which include access to Route 9.
3. Should the Board determine that the use is appropriate, the Board should also consider whether or not the density or number of units is appropriate.
4. The Applicant should clarify age-restricted "controls" and restrictions, and the Board may wish to make them a condition of the approval. *The applicant has indicated that the age-restriction would be a deed restriction which should be a condition of approval.*

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:ctr

Cc: David Roman, Applicant
William Stevens, P.E., Applicant Engineer
Alex Pavliv, Board Attorney
Jack Mallon, P.E., Board Engineer