



BOROUGH OF OCEANPORT

PLANNING/ZONING BOARD

AGENDA • MARCH 12, 2024

Regular

Clement V. Sommers Municipal Building

7:00 PM

910 Oceanport Way, Oceanport, NJ 07757

I. Call to Order

II. Open Public Meetings Statement: This meeting complies with the Open Public Meetings Act by adequate and electronic notification on January 10, 2024 of this meeting and its location, date and time to the Asbury Park Press and Two River Times and by the posting of same on the municipal bulletin board and Borough's Web Site.

III. Flag Salute

IV. Board Policy

- It is Board Policy that no application will be opened after 9:30 P.M.
- No new testimony will be taken after 10:00 P.M., except at the discretion of the Board.

V. Roll Call

VI. Board Business

1. Report of Pending Applications
2. Ordinance Committee
3. Master Plan Re-Examination

VII. Approval of Minutes

1. Planning/Zoning Board - Regular - Oct 11, 2022 7:00 PM
2. Planning/Zoning Board - Regular - Jun 27, 2023 7:00 PM
3. Planning/Zoning Board - Regular - Feb 27, 2024 7:00 PM

VIII. Old Business

1. **PR-24-09** Resolution of Approval – Parker's Creek Amended Site Plan
2. **PR-24-10** Resolution of Approval - 79 Iroquois Ave
3. **PR-24-11** Resolution of Approval - 30 Pocahontas Ave
4. **PR-24-12** Resolution of Approval - 502 Branchport Ave - *To Be Provided*

IX. New Business - None

X. Public Comment

XI. Adjournment



Planning/Zoning Combined Board

PO Box 370
Oceanport, NJ 07757

SCHEDULED

RESOLUTION - PB (ID # 3150)

8.1

Meeting: 03/12/24 07:00 PM
Department: Planning/Zoning Board
Category: PB Resolutions
Prepared By: Jeanne Smith
Initiator: Jeanne Smith
Sponsors:
DOC ID: 3150

Resolution of Approval - PARKER'S CREEK AMENDED SITE PLAN

RESOLUTION

**BOROUGH OF OCEANPORT PLANNING BOARD
APPROVAL OF THE AMENDED APPLICATION OF SOMERSET PULTE LODGING JV, LLC /
PARKERS CREEK
BLOCK 110.15, LOT 1
APPROVAL DATE: FEBRUARY 27, 2024
MEMORIALIZATION DATE: MARCH 12, 2024**

INTRODUCTION

WHEREAS, representatives of Somerset Pulte Lodging JV, LLC have made Application to the Oceanport Planning Board for the property located in the former Fort Monmouth Complex, designated as Block 110.15, Lot 1, Oceanport, New Jersey, within the Borough's Horseneck Center District and Fort Monmouth Historic District, for the following approval: Amended Site Plan Approval; and

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on February 27, 2024, Applicant's representatives having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

EVIDENCE / EXHIBITS

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- *Development Application, introduced into Evidence as A-1;*
- *Proposed Elevations, prepared by the Pulte Group, dated March 30, 2023, consisting of 2 sheets, introduced into Evidence as A-2;*
- *Elevation Comparison document, prepared by the Pulte Group, dated October 21, 2021, consisting of 14 sheets, introduced into Evidence as A-3;*
- *Architectural Plans, prepared by the Pulte Group, dated September 9, 2022, introduced into Evidence as A-4;*
- *Correspondence from Somerset Pulte Lodging JV, LLC (James P. Mullen, Esq.) to the Borough of Oceanport, dated January 18, 2024, introduced into Evidence as A-5;*

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- 1 copy of the 4 coversheets, for the approved Architectural Plans, entered into Evidence as follows:

A-6a (Frankton), dated June 20, 2022;
A-6b (Jetwood), dated July 17, 2022;
A-6c (Fairwood), dated June 17, 2022; and
A-6d (Jayton), dated June 20, 2022

- 4 copies of the Certificates of Occupancy, 1 for each of the models referenced above, entered as follows:

A-7a (Fairwood), dated October 24, 2023
A-7b (Jayton), dated October 20, 2023
A-7c (Jetwood), dated November 14, 2023
A-7d (Frankton), dated September 28, 2023

- A copy of the Architectural Plans, prepared by the Pulte Group, entitled "NEC – Parkers Creek Jayton Way, Waterfront Plans and Elevations," consisting of 22 sheets, dated November 11, 2021, introduced into Evidence as A-8;
- 1 copy of the 14 foot x 20 foot classic Vinyl Pergola Plans, prepared by Myer Hill Consulting, dated July 31, 2023 (1 sheet), introduced into Evidence as A-9;
- Parkers Creek Waterfront Elevations, Color Scheme (materials and manufacturer specifications), introduced into Evidence as A-10;
- Overall Site Plan, prepared by Dewberry (associated with the original Application), last revised August 25, 2022, introduced into Evidence as A-11;
- Comparison of Originally Approved Roof Design and Proposed Roof Design, prepared by Jacqueline Schaeffler, Architect, dated February 12, 2024, introduced into Evidence as A-12;
- Affidavit of Service; and
- Affidavit of Publication.

WITNESSES

WHEREAS, sworn testimony in support of the Application was presented by the following:

- Jacqueline Schaeffler, Architect;
- Rodney Walsh, Vice-President of Somerset Pulte Lodging JV, LLC;
- James Mullen, Esq., appearing;

WHEREAS, William H.R. White, III, P.E., P.P., CME, the Board Engineer, was also sworn with regard to any testimony and information he would provide in connection with the subject Application; and

PROCEDURAL HISTORY

- *On or about October 26, 2021, a prior Applicant received approval to develop a portion of the former Fort Monmouth Campus, including the property which is the subject of the within Application.*
- *Specifically, at that time, a prior Applicant received Site Plan and Bulk Variance Approval to effectuate the following:*
 - *Demolition of some existing buildings in the former Fort Monmouth Complex;*
 - *Renovation and adaptive re-use of 3 existing buildings on the former Fort Monmouth Tract; and*
 - *Construction of 180-Residential Units, consisting of 144 market rate for sale Townhouses, 16 age-restricted Affordable Rental Units, and 20 Affordable Rental Units.*

(The aforesaid approved Plans are hereinafter informally referred to as "Plan A.")

- *Subsequent to the Planning Board's Conditional Approval, agents of the prior Applicant submitted plans (hereinafter informally referred to as Plan "B") to obtain Building Permits for the construction of a number of the aforesaid residential units. The said plans were somewhat different from the Plan "A" Board-approved plans.*
- *The Board has been advised that the subject Plan "B" plans were signed by Municipal Officials, permits were issued, and construction of a number of units has been completed, and some units have been occupied.*
- *Thereafter, as the Board understands, through an arrangement with the Applicant's Officials, agents of Somerset Pulte Lodging JV, LLC (the Applicant herein) assumed responsibility for construction of approximately 22 units in the waterfront section of the development. In furtherance thereof, plans for the 22 waterfront units were submitted to Municipal Officials (and the said plans shall be informally referred to as Plan "C"). (The Plan "C" documents were somewhat different from the Planning Board conditionally approved plans (Plan "A") and somewhat different from the Plan "B" units which were already constructed).*
- *Thus, as referenced above, there appear to be 3 somewhat different plans at hand; namely, what has been informally referred to as Plan "A", Plan "B", and Plan "C".*
- *To reiterate, the plans, and general descriptions thereof (for purposes of the within Resolution) are identified as follows:*
- **Plan "A":** *The said plans represent the plans which were conditionally approved by the Planning Board on or about January 26, 2021.*
- **Plan "B":** *The plans which were different from the Plan "A" Board-approved plans, and representing the plans the prior Applicant's representatives utilized as the*

basis for the construction of some units (for which construction has been completed, Certificates of Occupancy have been issued, and for which occupancy has commenced.

- **Plan “C”:** The plans submitted by the Applicant herein relative to the 22 waterfront units which remain to be completed. (Note: The Plan “C” details are somewhat different from Plan “A” and somewhat different from Plan “B”).
- As referenced, agents of the Applicant herein submitted the Plan “C” documents and requested that Municipal Officials sign off / approve the same.
- The current Zoning Officer was hesitant about administratively signing off on the said Plan “C” plans, in the absence of Board approval of / consent for the proposed modifications.
- Representatives of the Applicant herein appeared at the January 9, 2024 Oceanport Planning Board meeting to administratively discuss the changes generated from Plan “B” to Plan “C”.
- Planning Board Members were taken off guard because Planning Board Members were not aware that there had been any change to what the Planning Board had previously approved on or about January 26, 2021 (Plan “A”). That is, Planning Board Members were not aware that Plan “B” modifications were previously submitted / approved, nor were they aware that Plan “C” modifications were submitted / proposed.
- The administrative discussion at the January 9, 2024 Planning Board meeting ended with a request for additional information, on such topics as the following:
 - A detailed explanation of the procedural and factual history associated with the approved Plans and the actual development;
 - A very detailed description of the amendments / changes relative to the approved / Plan “A” plans, the Plan “B” plans, and the proposed changes for the remaining 22 waterfront units (Plan “C”); and
 - A legal determination as to whether formal notice should be issued in connection with any future discussion of proposed Plan “C” changes / amendments (to the previously approved Plans).
- There was a concern amongst the Board Members that in the spirit of good government and transparency, any discussion regarding a potential Amendment to previously approved Plans (Plan “A”) should only be effectuated with Notice to the Public.
- Though the Applicant’s representatives were initially apprehensive about the same, the Applicant’s representatives did in fact Notice for such a Hearing.
- The publicly noticed Hearing (associated with the Applicant’s request for further Amendment to the Plan “A” documents, was effectuated at the Oceanport Planning Board Meeting of February 27, 2024.

TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE APPLICANT'S

REPRESENTATIVES

WHEREAS, testimony and other evidence presented by the Applicant's Representatives revealed the following:

- The Applicant herein is Somerset Pulte Lodging JV, LLC, a Limited Liability Company of the State of New Jersey.
- A prior Applicant previously obtained Planning Board Approval to effectuate the following (on a portion of the former Fort Monmouth Campus):
 - Demolition of some existing buildings on the former Fort Monmouth Tract;
 - Renovation and adaptive re-use of 3 existing buildings on the former Fort Monmouth Tract; and
 - Construction of 180 Residential Units, consisting of 144 market rate for sale Townhouses (including 22 waterfront units), 16 age-restricted Affordable Rental Units, and 20 Affordable Rental Units.
- Part of the prior approval included approval to construct 22 waterfront Townhomes.
- Thus far, 50 of the aforesaid 180 units have closed, and 36 units are currently under contract.
- The Applicant herein has obtained the specific development rights with respect to the 22 waterfront development units (as previously approved).
- As referenced elsewhere herein, the within Applicant proposes to modify the previously approved plans.
- Specifically, the Applicant herein proposes to effectuate the following modifications:
 - Creation of a sloped roof on the 22 waterfront units (as opposed to a flat roof, per the prior approval);
 - Extension of the parapet walls on the waterfront units (in lieu of installing roof-top railing); and
 - Elimination of the top floor pergolas on the 22 waterfront units.
- Though the Applicant's representatives initially proposed another change (allowing the top floor pergola feature to be an option of the 22 waterfront units) (as opposed to the previously approved plans which specifically included a pergola for each of the 22 waterfront units), based upon Board feedback and feedback from the

purchasing public, the Applicant's representatives have agreed to eliminate the pergola feature associated with all of the 22 waterfront units.

- The Applicant's representatives testified that the sloped roofs will be beneficial because of the following:
 - a. The sloped roofs will be better able to direct / manage water runoff;
 - b. The sloped roofs will be easier to maintain (than the flat roofs); and
 - c. The sloped roofs will be less likely to leak (than the flat roofs).
- The Applicant's representatives testified that the elements of the roof-top railing will be beneficial because of the following:
 - a. Such action will avoid multiple penetrations of the roof structure / membrane;
 - b. Such action will be much less likely to leak; and
 - c. Such action will result in easier maintenance.
- Plans memorializing most of the above have already been submitted to the Borough of Oceanport.
- While some aspect of the aforesaid plan revisions (Plan "C") may have obtained Building Department approval, Zoning Permits for the same have not yet been issued, pending approval from the Planning Board (for the proposed modifications).
- The Applicant's representatives anticipate that the construction of the 22 waterfront units will be commenced and completed in the near future.
- The Applicant's representatives will be utilizing licensed contractors in connection with the construction process.

VARIANCES

WHEREAS, no new variances are created in conjunction with the proposed modifications; and

WHEREAS, any previously granted variances for the site will not be exacerbated as a result of the modifications proposed herein.

PUBLIC COMMENTS

WHEREAS, no members of the public expressed any comments, questions, statements, objections, and/or concerns regarding the proposed modifications.

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the members of the Oceanport Planning Board, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application for Modified Site Plan relief is hereby **granted / approved, with conditions**.

In support of its decision, the Oceanport Planning Board makes the following Findings of Fact and Conclusions of Law:

1. The Oceanport Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is identified as Block 110.15 Lot 1, Oceanport, New Jersey, within the Borough's Horseneck Center District and Fort Monmouth Historic District.
3. On or about January 26, 2021, a prior Applicant obtained approval to effectuate the following:
 - Demolition of some existing buildings on the former Fort Monmouth Tract;
 - Renovation and adaptive re-use of 3 existing buildings on the former Fort Monmouth Tract; and
 - Construction of 180 Residential Units, consisting of 144 market rate for sale Townhouses (including 22 waterfront units), 16 age-restricted Affordable Rental Units, and 20 Affordable Rental Units.
4. A memorializing Resolution from the Planning Board was thereafter adopted.
5. There has been no known appeal of the said decision.
6. Construction has been completed with some phases of the previously approved project.
7. Some of the 180 units (as previously approved) have been completed, Certificates of Occupancy have been issued, and some of the units are, in fact, occupied.
8. The Applicant herein, has assumed responsibility for specific construction of the 22 waterfront units.
9. The Applicant's representatives are now looking to modify some of the previously

approved details with respect to the 22 waterfront units.

10. Specifically, the Applicant's representatives now wish to effectuate the following:

- The inclusion of sloped roofs on all 22 waterfront units (as opposed to flat roofs);
- Extension of the parapet walls on the waterfront units (in lieu of installing roof-top railings); and
- Elimination of the top floor pergolas on all of the 22 waterfront units.

11. Such a proposal requires amended Site Plan Approval.

12. The Oceanport Planning Board is statutorily authorized to grant the requested relief and therefore, the matter is properly before the said entity.

13. With regard to the Application, and the requested relief, the Board notes the following:

- Under the circumstances, it was, and is, appropriate for the Board to have required the within Applicant to publicly notice for the proposed amendments / modifications.
- Under the circumstances, public notice of the proposed modifications is necessary and appropriate.
- Under the circumstances, public notice associated with the proposed amendments is reflective of a transparent Government / Planning Board.
- Under the circumstances, public notice associated with the proposed amendments advances the concept of overall good government.
- Under the circumstances, public notice associated with the proposed amendments advances the spirit and intent of the New Jersey Municipal Land Use Law and the Open Public Meetings Act.
- In that public notice was issued for the underlying Application (when the same was approved), under the circumstances, public notice is required for the amendments proposed / approved herein.
- Under the circumstances, it is appropriate for the public to be informed about the proposed amendments to the previously approved plans.
- Under the circumstances, the lack of public notice associated with any material change of the previously approved plans could potentially expose the Applicant and the Board to legal liability.
- Under the circumstances, the lack of public notice associated with any change to the previously approved plans could be subject to judicial criticism or judicial reversal.

- Under the circumstances, the lack of any public notice associated with any change of the previously approved plans could potentially lead to further building / construction delays, and other delays associated with the overall development process.
- The Board also notes that during the underlying hearing process (when the initial Application was conditionally approved), there were some members of the public who actually participated in the hearing process.
- The Board also notes that during the underlying hearing process (when the initial Application was conditionally approved), other members of the public may have chosen to participate in the process had they known about the proposed modifications proposed / approved herein.
- Under the circumstances, public notice is required, and the same is appropriate.
- An informed citizenry is a staple of modern good government.
- As referenced earlier herein, the Oceanport Planning Board conditionally approved the underlying Application on or about January 26, 2021, and a memorializing Resolution was adopted thereafter.
- As referenced elsewhere herein, the Board is aware that the approved plans (Plan "A") were previously changed (Plan "B"), without the knowledge, consent, awareness, or approval of the Planning Board.
- The Board is furthermore aware that the so-called Plan "B" units received Building Permits, received Zoning Permits, construction was completed, Certificates of Occupancy were issued, and some of the units have, in fact, been lawfully occupied.
- The Board Members were upset and/or concerned to learn that plan revisions (Plan "B") were effectuated without the official knowledge / consent of the Planning Board.
- The Board Members recognize the legal principles associated with equitable estoppel and the like, and the Board also does recognize the many hurdles / obstacles / risks / costs / delays, and disruption to existing occupants which could clearly result from any legal challenge associated with the aforesaid Plan ("B") modifications associated with the non-waterfront units (without the official knowledge / consent of the Planning Board).
- That notwithstanding, the Board concerns / objections associated with the aforesaid Plan "B" process are worthy of being noted and documented.
- The Board is aware that in the course of any development, let alone construction of a large development project involving 180 new residential units, as involved herein, there are a number of potential issues which can result in the need for plan changes – including, but necessarily limited to, the following:

- Unanticipated field conditions;
 - Changed field conditions;
 - Unanticipated utility company demands;
 - Changing utility company demands / policies;
 - Unanticipated conditions from outside approval agencies;
 - Supply chain issues;
 - Price increases associated with certain materials;
 - Worldwide economic issues;
 - Unanticipated changes in labor costs;
 - Developer preferences;
 - Change of Developers;
 - Change of Architects;
 - Change in market forces; and
 - Other sufficient causes.
- The aforesaid issues may constitute perfectly legitimate bases for a change, or a potential change, in any previously approved plans.
 - However, material changes, or potentially material changes of a previously approved plan must be officially acknowledged / authorized / approved by the Planning Board.
 - During the underlying public hearing process (when the initial Application was approved), the Oceanport Planning Board Members extensively reviewed the plans / testimony, and after 3 intense / long public hearings, the Application was, ultimately, conditionally approved. As is typical, during the public hearing process, the Oceanport Planning Board Members spent considerable time reviewing / approving / refining many issues associated with the approval – including, specific architectural details, specific aesthetic details, specific roof details, specific window details, and the like.
 - Unilateral or potential material changes by the Developer, any Developer, is not appropriate, absent accompanying endorsement / approval by the Planning Board.
 - It is axiomatic that certain architectural / aesthetic features (associated with the underlying approval) may have been a contributing fact as to why 1 or more particular Board Members specifically voted to approve (or object) to the overall initial Application.
 - It is axiomatic that certain architectural / aesthetic features (associated with the underlying approval) may have been a basis as to why a particular member of the public specifically supported the initial Application, or objected to the same.
 - The Board is aware that the Plan “B” modifications are not directly related to the within Applicant.
 - The Board also appreciates the patience of the Applicant’s representatives in following a formal procedure to obtain amended approval associated with the so-called “C” Plans.

- The Board also appreciates the fact that internal and external municipal policies / safeguards have been informally put in place so as to minimize the possibility of any future unilateral changes being effectuated without Planning Board consent.
- Among other things, the Board Resolutions will continue to contain a condition providing any material or potentially material deviation in plan details requires the affirmative approval of the Planning Board.
- Additionally, in the future, Resolutions of Conditional Approval will typically contain a condition requiring the Applicant's professional to certify, in writing, that the subject building / structural improvement has been designed / constructed in accordance with the approved plans, in accordance with the testimony presented during the public hearing, and in accordance with the Planning Board Resolution.
- Moreover, Borough / Board personnel are aware of the Planning Board sensitivities in the said regard.
- As indicated, the Applicant herein is now seeking approval to modify some of the design features associated with the 22 waterfront units (informally referred to as Plan "C").
- As referenced, because of internal mechanisms, the Applicant's proposed changes (Plan C) were flagged, and the development process was halted, pending official Planning Board review / approval of the proposed plan "C" modifications.
- At the Board's insistence, the proposed Plan C changes were officially reviewed / discussed at a duly noticed public hearing – and the Board appreciates the cooperation of the Applicant's representatives in officially noticing for the proposal.
- Additionally, at the Board's insistence, specifically details plans (outlining all features associated with the proposed modifications) were submitted to the Board for review – and again, the Board appreciates the cooperation of the Applicant's representatives in the said regard.
- As referenced, 1 of the changes proposed herein involves a change to the previously approved roof pitch for the 22 waterfront units. Specifically, as initially approved, each of the waterfront units were to have had a flat roof.
- The Applicant's representatives are now proposing to have a sloped roof for the 22 waterfront units. Moreover, as indicated, the Applicant herein is also proposing an extension of the parapet walls on the 22 waterfront units (in lieu of installing roof-top railings). With the underlying approval, the knee walls had an open railing, and the Applicant's representatives are now proposing a closed parapet wall (instead of the open railing feature). Thirdly, as referenced, the Applicant's representatives also propose to eliminate the top floor pergola feature associated with all of the waterfront units.

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- As indicated, 1 of the proposed amendments concerns a request to eliminate the top floor pergolas. Initially, the approved plans (Plan “A”) provided for top-level pergolas. The Applicant’s representatives thereafter indicated that they wanted to make the top floor pergolas an option for the would-be home buyers. That is, if the home buyers wanted the pergola, the same would be included. However, if the would-be buyers did not want the top floor pergola then, in that event, the same would be eliminated. There was considerable discussion on the subject issue. Some Board Members were concerned about the fact that if some units would have top floor pergolas, and some units would not have top floor pergolas, the same could detrimentally compromise the overall aesthetic appeal / design of the project. Some other Board Members, however, indicated that the inclusion of the top floor pergolas was visually and aesthetically appealing, and even 1 reason among many reasons, why the underlying initial Application was approved. During the February 27, 2024 public hearing on the matter, the Applicant’s representatives advised that of the 7 waterfront units which are contracted to be sold, all 7 contract purchasers specifically chose not to include the top floor pergolas. As a result, and because of the apparent desire of a majority of the Board Members, the Applicant’s representatives advised that they would affirmatively eliminate the top floor pergola option completely. That is, the Applicant’s representatives agreed that none of the waterfront development units would have a top floor pergola. The said concession was acceptable to most, but not all, of the Board Members.
- With regard to the proposed change to the roofs (flat roof to a pitched roof), the Applicant’s representatives testified as follows:
 - a. That the sloped roofs would shed water much better than a flat roof would shed water;
 - b. That sloped roofs would be easier to maintain (than flat roofs) (with respect to snow removal, and the like); and
 - c. That sloped roofs were less likely to leak (than flat roofs).
- A majority of the Board Members accept the aforesaid practical / functional reasons associated with the proposed roof modifications.
- With regard to the elimination of the roof-top railings, the Applicant’s representatives essentially testified as follows:
 - a. The same will avoid / eliminate multiple penetrations of the roof structure / membrane;
 - b. The same will be much less likely to leak; and
 - c. The same will facilitate the overall maintenance process.

A majority of the Board Members accept the aforesaid reasons associated with the proposed elimination of the roof-top railings for the 22 waterfront units.

- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not compromise the overall aesthetic appeal of the project.
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not compromise the overall architectural design of the project.
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not comprise the spirit and intent of the underlying approval.
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not dramatically change the overall look / design / appearance of the project.
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not create the need for any new variances.
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not exacerbate any previously granted variance relief.
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not change the building setback (from what was previously appreciated).
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not change the building orientation (from what was previously approved).
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not materially increase the size of any of the units (from what was previously approved).
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not materially increase the amount of living space in any unit (from that which was previously approved).

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- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not increase the number of overall dwelling units in the complex (from what was previously approved).
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not increase the parking demands associated with the project (from what was previously approved).
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not change the overall amount of garbage generated at the site (from what was previously approved).
- Though the proposed changes are material, and worthy of Board action, upon review, and based upon the testimony and evidence presented, a majority of the Board finds that the proposed modifications will not increase the overall density of the project (from what was previously approved).
- With the plan modifications approved herein, the Board reaffirms and reiterates the Findings of Fact and Conclusions of Law as set forth in the Board's initial Resolution of Conditional Approval (for the underlying project).
- Subject to any necessary Design Waivers, the within Application for the proposed modifications satisfies the prevailing Site Plan requirements of the Borough of Oceanport.
- Subject to the conditions set forth herein, the benefits associated with the amended Application outweigh any detriments associated therewith.
- Subject to the conditions contained herein, approval of the within amended Application will have no known detrimental impact on adjoining property owners and thus, the Application can be granted without causing substantial detriment to the public good.
- Approval of the within Application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.

Based upon the above, and subject to the conditions contained herein, a majority of the Board is of the opinion that the requested relief can be granted without causing substantial detriment to the public good.

CONDITIONS

During the course of the Hearing, the Board has requested, and the Applicant's representatives have agreed, to comply with the following conditions:

- a. The Applicant's representatives shall comply with all commitments, promises, and representations made at or during the Public Hearing process.
- b. The Applicant's representatives shall cause the Plans to be revised so as to portray and confirm the following:
 - The inclusion of a note confirming that there shall be no further modifications to the Plans, absent further approval of the Oceanport Planning Board;
 - The inclusion of a note confirming that the amendments approved at the February 27, 2024 Oceanport Planning Board meeting apply only to the 22 waterfront Townhomes;
 - Confirmation that the pages of the applicable Plans and elevations have been modified to reflect the specific amendments approved by the Planning Board at the February 27, 2024 Planning Board Meeting; and
 - Confirmation that the top-floor pergolas have been removed / eliminated on the plans for all 22 waterfront units.
- c. The Applicant herein shall comply with all terms and conditions of the Board's prior approval, unless specifically obviated herein.
- d. Upon construction of the development (i.e., 22 waterfront units), the Applicant's professional representatives shall submit a Certification confirming that the units have been constructed in accordance with the approved plans, in accordance with testimony presented to the Board, and in accordance with the within Resolution.
- e. The Applicant shall comply with all prevailing / applicable Affordable Housing Rules, Regulations, Directives, and Contributions, as required by the State of New Jersey, COAH, the Borough of Oceanport, the Court System, and any other Agency with jurisdiction over the matter.
- f. The Applicant shall obtain any applicable permits / approvals as may be required by the Borough of Oceanport - including, but not limited to, the following:
 - Building Permit
 - Plumbing Permit
 - Electric Permit
 - Fire Permit
- g. The Applicant shall comply with all Prevailing / applicable FEMA / Flood Regulations.
- h. The construction shall be strictly limited to the Plans which are referenced herein, and which are incorporated herein at length. Additionally, the construction shall comply with Prevailing Provisions of the Uniform Construction Code.
- i. The Applicant shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, the Municipal Project Assistant, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and/or other agents of the Borough.

- j. The Applicant shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District. Additionally, to the extent the application materially changes as a result of any of the aforesaid outside approvals, then, in that event, the Applicant shall be required to return to the Board for further review / relief.
- k. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- l. The within approval shall be deemed abandoned, unless, within 24 months of adoption of the within Resolution (or any extension formally granted by the Planning Board) the Applicant obtains a Building Permit for the construction approved herein.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicant's representatives shall be deemed conditions of the approval granted herein, and any mis-representations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of the within approval.

BE IT FURTHER RESOLVED, that the Application is granted only in conjunction with the conditions noted above - and but for the existence of the same, the within Application would not be approved.

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicant's compliance with all other appropriate Rules, Regulations, and/or Ordinances of the Borough of Oceanport, County of Monmouth, and State of New Jersey.

BE IT FURTHER RESOLVED, that the action of the Board in approving the within Application shall not relieve the Applicant of responsibility for any damage caused by the subject project, nor does the Planning Board of the Borough of Oceanport, the Borough of Oceanport, or their agents / representatives accept any responsibility for the structural design of the proposed improvements, or for any damage which may be caused by the development.

PR-24-09

03-12-24

This resolution memorializes an action taken at the regular meeting of the Oceanport Planning Board held on February 27, 2024 on roll call that evening by the following vote:

Offered by: _____

Seconded by: _____

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	()	()	()	()	()
Kahle	()	()	()	()	()
Widdis, C.	()	()	()	()	()
Foster	()	()	()	()	()
Cooper	()	()	()	()	()
Calver	()	()	()	()	()
Barham-Widds, L.	()	()	()	()	()
Davis	()	()	()	()	()
Dailey	()	()	()	()	()
Gruskos, D. (Alt. #1)	()	()	()	()	()
Kleiberg, R. (Alt. #2)	()	()	()	()	()

This resolution was offered by _____, seconded by _____, and adopted on roll call by the following vote:

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	()	()	()	()	()
Kahle	()	()	()	()	()
Widdis, C.	()	()	()	()	()
Foster	()	()	()	()	()
Cooper	()	()	()	()	()
Calver	()	()	()	()	()
Barham-Widds, L.	()	()	()	()	()
Davis	()	()	()	()	()
Dailey	()	()	()	()	()
Gruskos, D. (Alt. #1)	()	()	()	()	()
Kleiberg, R. (Alt. #2)	()	()	()	()	()

I hereby certify that the foregoing Resolution was adopted by the Planning Board of the Borough of Oceanport at its meeting of March 12, 2024.

Jeanne Smith, Secretary

KEK/dmp

Z:\KevinKennedyLaw\Municipal\Oceanport Planning Board\Somerset Pulte Lodging JV, LLC Parkers Creek - Amendments\Resolution.docx



Planning/Zoning Combined Board

PO Box 370
Oceanport, NJ 07757

SCHEDULED

RESOLUTION - PB (ID # 3149)

Meeting: 03/12/24 07:00 PM
Department: Planning/Zoning Board
Category: PB Resolutions
Prepared By: Jeanne Smith
Initiator: Jeanne Smith
Sponsors:
DOC ID: 3149

8.2

Resolution of Approval - 79 Iroquois Ave

RESOLUTION

**BOROUGH OF OCEANPORT PLANNING BOARD
 APPROVAL OF THE APPLICATION OF ANNA PIERCE
 79 IROQUOIS AVENUE / BLOCK 10, LOT 20.03
 APPROVED FEBRUARY 27, 2024
 MEMORIALIZED MARCH 12, 2024**

Introduction

WHEREAS, Anna Pierce has made Application to the Oceanport Planning Board for the property designated as Block 10, Lot 20.03, commonly known as 79 Iroquois Avenue, Oceanport, NJ, within the Borough's R-3 Zone, for the following approval: Bulk Variance relief associated with a request to effectuate several improvements to a property which hosts an existing single-family home; and

Public Hearing

WHEREAS, the Board held a Public Hearing February 27, 2024, Applicant having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

Evidence / Exhibits

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- *Development Application, introduced into Evidence as A-1;*
- *Plot Plan, prepared by InSite Engineering, last revised December 1, 2023, consisting of 1 sheet, introduced into Evidence as A-2;*
- *Boundary and Topographic Survey, prepared by InSite Surveying, last revised August 7, 2023, consisting of 1 sheet, introduced into Evidence as A-3;*
- *Colliers Engineering & Design Review Memorandum, dated January 24, 2024, introduced into Evidence as A-4;*
- *A copy of the subject Deed (DeGennaro to Pierce) dated August 16, 2016, recorded in the Office of the Monmouth County Clerk on October 3, 2016 (Book OR-9189, Page 8652), introduced into Evidence as A-5;*

- *Specifications for the proposed outdoor wood-burning fireplace, introduced into Evidence as A-6;*
- *Zoning Denial Letter, dated October 25, 2023, introduced into Evidence as A-7;*
- *Illustrated Site Layout, prepared by InSite Engineering, dated February 27, 2024, introduced into Evidence as A-8;*
- *Illustrated picture of the specifications for the proposed outdoor wood-burning fireplace, introduced into Evidence as A-9 (same document which was introduced into Evidence as A-6);*
- *Affidavit of Service; and*
- *Affidavit of Publication;*

Witnesses

WHEREAS, sworn testimony in support of the Application was presented by the following:

- Stephen Musto, Professional Engineer;
- Robert Hudak, Professional Planner;

WHEREAS, William H. R. White, III, P.E., P.P., CME, the Planning Board Engineer and Planner, was also sworn with regard to any testimony / information he would provide in connection with the Application; and

Testimony and Other Evidence Presented on Behalf of the Applicant

WHEREAS, testimony and other evidence presented by the Applicant and her representatives revealed the following:

- The Applicant is the Owner of the subject property.
- There is an existing single-family home at the site, with an asphalt driveway, concrete and brick paver walkways, and a paver patio.
- The Applicant lives at the site.
- The existing patio is quite small, does not satisfy the realistic outdoor living needs of the Applicant, and the same cannot really accommodate much more than just a table.

- The Applicant desires to have a larger and more functional patio.
- The Applicant also desires to install other external improvements at the site as well.
- Against the within backdrop, the Applicant submitted a Development Application to the Borough of Oceanport.
- In the Application, the Applicant proposes to effectuate the following:
 - Removal of an existing paver walkway, and a replacement of the same with a reduced / smaller walkway;
 - Removal of the existing patio, and replacement of the same with a larger patio; and
 - Installation of a wood-burning fireplace on the new patio.
- Details pertaining to the proposed improvements include the following:

New Walkway

Location:	West side of home (per Plans)
Materials:	Pavers
Size:	4 ft. wide (per testimony and plans)

New Patio

Location:	Rear of home / property (per Plans)
Materials:	Pavers
Size:	Approximately 37 ft. wide X approximately 20 ft. deep (per plans)

New Fireplace

Type of Fireplace:	Pre-fabricated wood-burning fireplace (see specifications as set forth in the document marked into Evidence as A-6)
Location:	Rear of site, northeast portion of new paver patio.
Height:	9.7 ft. tall
Width:	56 inches
Length:	91 inches
Materials:	Brick

- A Drainage Easement, for the benefit of the Borough of Oceanport, exists over a portion of the Applicant's subject property.

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- The proposed new patio and proposed new fireplace will encroach into / on / over the existing Drainage Easement. (Apparently, there is an existing wall which currently encroaches into / over / on the Easement area as well.)
- Per the extensive discussion at the Public Hearing process, the Applicant understands that the Oceanport Planning Board has no lawful authority to grant an individual, any individual, approval to build on / over / within the Drainage Easement. Rather, any such approval for such an encroachment must be obtained from the Borough of Oceanport.
- Under separate cover, the Applicant's representative will presumably forward a request (to the Borough of Oceanport) to obtain permission to encroach on / over the existing Drainage Easement.
- The Applicant anticipates that the installation of the improvements will be effectuated in the near future.
- The Applicant will be utilizing licensed contractors in connection with the installation of the proposed improvements.

Variance

WHEREAS, the Application as presented, requires approval for the following Variance:

IMPERVIOUS COVERAGE: Maximum allowed 37%; whereas 45.99% proposed;

Public Comments

WHEREAS, there were no public comments, questions, statements, and / or objections issued in connection with the subject Application.

Findings of Fact

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Oceanport, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application, is hereby **granted / approved with conditions**.

In support of its decision, the Planning Board makes the following Findings of Fact and Conclusions of Law:

1. The Oceanport Planning Board has proper jurisdiction to hear the within matter.
2. The subject property is located at 79 Iroquois Avenue, Oceanport, NJ, within the Borough's R-3 Zone.
3. The subject property contains 13,000 SF (0.30 acres).
4. The subject property is located on the north side of Iroquois Avenue, approximately 1,235 ft. west of Port-Au-Peck Avenue.
5. There is an existing 2-story single-family dwelling at the site, with an asphalt driveway, concrete and brick paver walkways, and a paver patio.
6. The Applicant herein proposes to effectuate the following:
 - Removal of an existing paver walkway, and a replacement of the same with a reduced / smaller walkway;
 - Removal of the existing patio, and replacement of the same with a larger patio; and
 - Installation of a wood-burning fireplace on the new patio.
7. Such a proposal requires Bulk Variance Approval.
8. The Oceanport Planning Board is statutorily authorized to grant the requested relief and therefore, the matter is properly before the said entity.
9. With regard to the Application, and the requested relief, the Board notes the following:
 - The existing and to-be-continued single-family use at the site is a permitted use in the Borough's R-3 Zone.
 - The Applicant's representatives testified that the existing patio at the site is not large enough to comfortably accommodate any individual, let alone a table, set of chairs, etc. Thus, the main basis associated with the Applicant's request seems to be to obtain a larger and more functional / useable patio.
 - The Board Members understand and appreciate the rationale to enlarge the existing small patio.
 - The existing patio at the site is approximately 13 ft. deep X approximately 30 ft. wide.

- The new / replacement patio approved herein measures approximately 20 ft. deep X approximately 37 ft. wide.
- The new / replacement patio will be located in the same general location as the existing patio.
- The Application as presented requires approval for an Impervious Coverage Variance.
- The relevant Impervious Coverage calculations include the following;

Maximum allowable impervious coverage	37%
Existing impervious coverage.....	44.28%
Proposed impervious coverage	45.99%

- While the new / replacement patio will be larger than the existing patio, thereby increasing overall Impervious Coverage at the site, the Applicant's representatives simultaneously agreed to reduce the size of some of the existing walkways at the site so as to minimize any increase in the overall Impervious Coverage at the site.
- The Board finds that it was and is appropriate for the Applicant to reduce / eliminate some of the existing overall Impervious Coverage at the site in order to accommodate the improvements proposed herein.
- Per the testimony and evidence presented, there are no other practical / functional ways to further reduce the overall Impervious Coverage at the site.
- Per the testimony and evidence presented, any further material reduction in the overall Impervious Coverage at the site would likely adversely impact the existing home / driveway (which would not be beneficial).
- Based upon the testimony and evidence presented, and subject to the conditions of the within approval, the Board finds that there will be no adverse grading / drainage issues associated with the within proposal.
- Per the testimony and evidence presented, installation of the proposed improvements will not change the overall drainage pattern at the site.
- Per the testimony and evidence presented, approval of the within Application will not adversely impact any adjoining neighbors.
- Per the testimony and evidence presented, the existing swale at the site will remain, thereby minimizing any adverse impacts associated with the within Variance approval.
- The proposed improvements will be sufficiently screened by a row of Evergreens and other landscaping at the site.
- Moreover, in conjunction with the above point, and as a condition of the within approval, the Applicant's representatives shall perpetually maintain

/ replace/ re-plant the landscaping at the site, as necessary (so as to continuously minimize any adverse impact associated with the installation of the subject improvements).

- Approval of the within Application will not change the overall lighting plan at the site.
- There is an existing Drainage Easement over the site, which exists for the benefit of the Borough of Oceanport.
- Per the testimony and evidence presented, there is an existing wall (wall of a structure) which apparently encroaches into / on / over the aforesaid Drainage Easement.
- Per the testimony and evidence presented, a portion of the Applicant's proposed new patio and a portion of the Applicant's proposed new wood-burning fireplace will also encroach on / over / into the subject Drainage Easement.
- During the Public Hearing process, the Board representatives advised the Applicant's representative that because the Drainage Easement was for the benefit of the Borough of Oceanport, the Oceanport Planning Board has no legal authority to authorize any encroachments into / on / over the subject Drainage Easement.
- The within approval is contingent upon the Applicant receiving formal approval (from the Borough of Oceanport) to encroach into the subject Drainage Easement.
- In conjunction with the above point, the within approval is contingent upon additional conditions relative to the Drainage Easement – including, but not limited to, an obligation of the Applicant (and her successors) to release, defend, indemnify, and hold the Borough of Oceanport and the Oceanport Planning Board (and their respective Agents, Representatives, Employees, Professionals, Contractors, etc.) harmless from and against any and all losses / liabilities / damages / judgments associated with the encroachment into / on / over the Drainage Easement area, and the improvements associated therewith.
- The specific conditions of approval (relative to the Drainage Easement Encroachment) are more clearly defined in the "Condition" section of the within Resolution – and but for the same, the within Application would not have been approved.
- Approval of the within Application will enhance the overall aesthetic appeal of the subject backyard area of the property.
- The improvements authorized herein will provide the Applicant with additional outdoor type of living space, resulting in a more modern and functional house / site.

- The materials for the proposed improvements will architecturally / aesthetically match / complement the existing structure.
- The Board understands the need and rationale for the proposed improvements.
- The location of the proposed improvements is logical and practical.
- Subject to the conditions contained herein, the proposal, as approved herein, represents an appropriate and non-invasive fashion in which an existing structure can be updated / modified / improved, without causing substantial detriment to the public good.
- The benefits of the proposed improvements, as espoused elsewhere herein, help justify the granting of the requisite Variance relief.
- Approval of the within Application will improve the overall visual appeal of the existing site.
- The Board finds that the overall improvements / benefits associated with the proposal help justify the granting of the requested Variance relief.
- Per the testimony and evidence presented, the existing single-family site amenities were not built / installed for the needs of a modern family (in terms of size, design, layout, etc.).
- Per the testimony and evidence presented, there is a need for increased outdoor living type of space at the site.
- The Applicant submitted detailed plans of the proposed improvements, which sufficiently described the appearance / location / orientation of the same. Additionally, subject to the conditions set forth herein, the proposed improvements will comply with the Prevailing Building Code Requirements.
- Based upon the testimony/evidence presented, installation of the proposed improvement will continue the pattern of existing development in the area.
- The subject Lot is an appropriate host for the expanded single-family amenities approved herein.
- Given the lay-out of the Lot and the existing home, the location of the proposed improvements / amenities are appropriate and practical.
- Subject to the conditions contained herein, the improvements approved herein will not overpower / overwhelm the subject Lot.
- Subject to the conditions contained herein, the authorized improvements will not overpower / dwarf other homes in the area.

- Per the testimony and evidence presented, under the Borough's Prevailing Regulations the site is required to have a sufficient number of off-street parking spaces – and sufficient / compliant spaces are proposed. Thus, no Parking Variance is required in connection with the Application.
- The existence of sufficient and appropriate parking at the Site is an important consideration – and but for the same, the within application may not have been approved.
- The Board finds that the proposed improvements have been efficiently designed.
- Upon completion of the renovation process, the home (with proposed improvements) will be consistent with other single-family homes in the area, on similarly sized lots.
- The Board notes that there were no public objections associated with the Application.
- The Board finds that sufficient testimony has been presented for the Application to be adjudicated – and the Board furthermore finds that, subject to the conditions contained herein, there is no need to elicit additional information to supplement the record.
- The architectural / aesthetic benefits associated with the proposal outweigh the detriments associated with the Applicant's inability to comply with the Specified Bulk Standards.
- The architectural design of the proposed improvements will not be inconsistent with the architectural design of other single-family homes in the area (on similarly sized lots, with similar improvements).
- Subject to the conditions set forth herein, the benefits associated with approving the within Application outweigh any detriments associated with the same.
- Approval of the within Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- The improvements to be constructed herein will not be inconsistent with other improvements located within the Borough.
- Approval of the within Application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.
- The Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

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For the above reasons, and for the other reasons set forth in the public hearing process, the Board is of the unanimous opinion that the requested relief can be granted without causing substantial detriment to the public good.

Conditions

During the course of the Hearing process, the Board Members requested, and the Applicant has agreed, to comply with the following conditions:

- a. The Applicant shall comply with all terms, conditions, promises, and representations made at or during the Public Hearing Process.
- b. The Applicant shall work with the Borough Engineer so as to appropriately control / manage storm-water management at the site.
- c. The Applicant shall comply with the terms and conditions of the Board Engineer's Review Memorandum, dated January 24, 2024 (A-4).
- d. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:
 - The inclusion of a note confirming that there shall be no adverse light spill over onto adjacent properties;
 - The inclusion of a note confirming that grading and drainage details shall be reviewed and approved by the Board Engineer (if the grading at the site is to be changed / modified);
 - The inclusion of the Drainage Easement details on the same;
 - The inclusion of a note confirming that the Applicant shall perpetually maintain, replace, and re-plant landscaping at the site (so as to perpetually minimize any adverse impact associated with the within Variance relief);
 - The inclusion of a note confirming that there shall be no adverse stormwater run-off associated with the subject property;
 - The inclusion of a note confirming that there shall be no water run-off onto adjacent private properties;
 - The inclusion of a note confirming that there shall be no adverse light spillover associated with the subject site;

- The inclusion of a note confirming that the existing swale shall remain in place at the site (in a functional capacity);
 - The inclusion of a note confirming that the exterior fireplace at the site shall not be a gas fireplace with a gas line – but rather, the same will only be a wood-burning fireplace; and
 - The inclusion of a note confirming that the approved improvements shall not interfere with the existing Drainage Easement.
- e. Unless otherwise formally waived by the Borough Council, the Applicant shall secure approval from the Borough of Oceanport so as to install the encroaching patio / fireplace in / over the easement area (and presumably retroactively legitimizing any prior and continuing easement encroachment).
 - f. The Applicant, if so authorized by the Municipality, shall install the improvements in / over the easement area, at the Applicant's own cost / expense / risk.
 - g. Unless otherwise waived by the Borough Council, and the Planning Board, the Applicant (and successor owners) shall allow Borough representatives, Borough contractors (and their agents, representatives, employees, and professionals) to have the ability to enter the site, without notice, and with workers, equipment, and machinery, in the event there is a need for the drainage pipe / easement area to be repaired / maintained / improved / replaced / extended / addressed / altered, etc. (to be liberally construed).
 - h. The Applicant acknowledges that the Applicant is not entitled to any form of reimbursement / compensation / claim / relief if the easement area needs to be distributed in the future, resulting in the damage / removal of any of the Applicant's encroaching improvements.
 - i. Unless otherwise waived by the Borough Council and the Planning Board, the Applicant (and her agents, representatives, successors, and assigns) shall release, defend, indemnify, and hold the Borough of Oceanport and the Oceanport Planning Board (and their respective agents, representatives, employees, professionals, and contractors) harmless from and against any and all damages / losses / costs / injuries (including reasonable attorney fees) resulting from, or in any way associated with, the Applicant's encroaching improvements into the Drainage Easement.
 - j. Unless otherwise waived by the Borough Council and Planning Board, the Applicant shall arrange for a licensed professional to conduct a televised before and after video inspection of the drainage pipe / pipes so as to determine the condition of the pipe / pipes before and after the work has been completed (so as to establish a benchmark as to the condition of the pipes, and as a tool to aid in the proof of any future pipe damage).

- k. Unless otherwise waived by the Borough Council, the Applicant acknowledges that there is no need for the Borough (or its agents) to restore the easement area to its pre-disturbed condition (in the event the drainage pipe needs to be accessed for improvement, maintenance, inspection, repair, etc.).
- l. Unless otherwise waived by the Borough Council, the Applicant (and any successor owner) shall obtain and maintain liability insurance, specifically naming the Borough of Oceanport and the Oceanport Planning Board as additional insureds.
- m. Unless otherwise waived by the Borough Council, the conditions contained herein shall be binding on the Applicant and any successor owners / occupants.
- n. The within Resolution, or a Notice of the same (as approved by the Board Attorney) shall be recorded in the Office of the Monmouth County Clerk – and proof of recording shall be submitted to the Board Secretary.
- o. The Applicant shall comply with any other obligations / conditions imposed by the Borough of Oceanport (relative to the easement encroachment).
- p. Unless otherwise waived by the Borough Council, any official Borough authorization of the easement encroachment shall be conditioned upon the adoption of the memorializing Planning Board Resolution, and the successful expiration of any applicable appeal period associated therewith;
- q. The Applicant shall comply with all prevailing Affordable Housing rules / regulations / contributions / directives, as required by the State of New Jersey, the Borough of Oceanport, COAH, the Court system, and any other Agency having jurisdiction over the matter.
- r. Upon installation of the improvements, unless otherwise waived by Board Engineer, the Applicant shall submit a certified as-built Survey.
- s. Upon installation of the improvements, and unless otherwise waived, the Applicant's professional representatives shall submit a Certification detailing that the improvements have been installed per the approved Plans, per the testimony presented, and per the terms and conditions of the within Resolution.
- t. The Applicant shall comply with all Prevailing Building / Construction Code Requirements.
- u. The Applicant shall comply with any and all applicable on-site construction regulations as required by the Borough of Oceanport and any other Agency having jurisdiction over the matter.

- v. The Applicant shall obtain any applicable permits/approvals as may be required by the Borough of Oceanport - including, but not limited to the following:
- Building Permit
 - Plumbing Permit
 - Electric Permit
- w. If applicable, the proposed structure shall comply with applicable provisions of the Americans with Disabilities Act.
- x. Unless otherwise waived by the Board Engineer, prior to the issuance of Permits, grading / drainage plans shall be submitted to the Board Engineer (for his review and approval) so as to confirm that any drainage / run-off does not go onto or otherwise adversely affect adjoining properties.
- y. The construction / installation shall be strictly limited to the plans which are referenced herein, and which are incorporated herein at length. Additionally, the construction / installation shall comply with Prevailing Provisions of the Uniform Construction Code and Applicable Provisions of the Building Code.
- z. The Applicant shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, the Municipal Project Assistant, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and / or other Agents of the Borough.
- aa. The Applicant shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, the local Sewer Authority, the Borough of Oceanport, and the Freehold Soil Conservation District. To the extent the within Application materially changes as a result of such outside approvals, then, in that event, the Applicant shall be required to return to the Planning Board for further review / approval.
- bb. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate/required fees and taxes.
- cc. If required by the Board / Engineer / NJMLUL, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Oceanport.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicant and / or her agents shall be deemed conditions of the approval granted herein, and any mis-representations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of the within approval.

BE IT FURTHER RESOLVED, that the Application is granted only in conjunction with the conditions noted above - and but for the existence of the same, the within Application would not be approved.

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicant's compliance with all other appropriate Rules, Regulations, and/or Ordinances of the Borough of Oceanport, County of Monmouth, and State of New Jersey.

BE IT FURTHER RESOLVED, that the action of the Board in approving the within Application shall not relieve the Applicant of responsibility for any damage caused by the subject project, nor does the Planning Board of the Borough of Oceanport, the Borough of Oceanport, or their respective agents / representatives accept any responsibility for the structural design of the proposed improvements or for any damage which may be caused by the development / installation.

SUMMARY OF GRANTED VARIANCE RELIEF

*IMPERVIOUS COVERAGE: Maximum 37% allowed; whereas
45.99% approved (44.28% existing);*

PR-24-10

03-12-24

This resolution memorializes an action taken at the regular meeting of the Oceanport Planning Board held on February 27, 2024 on roll call that evening by the following vote:

Offered by: _____

Seconded by: _____

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	()	()	()	()	()
Kahle	()	()	()	()	()
Widdis, C.	()	()	()	()	()
Foster	()	()	()	()	()
Cooper	()	()	()	()	()
Calver	()	()	()	()	()
Barham-Widds, L.	()	()	()	()	()
Davis	()	()	()	()	()
Dailey	()	()	()	()	()
Gruskos, D. (Alt. #1)	()	()	()	()	()
Kleiberg, R. (Alt. #2)	()	()	()	()	()

This resolution was offered by _____, seconded by _____, and adopted on roll call by the following vote:

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	()	()	()	()	()
Kahle	()	()	()	()	()
Widdis, C.	()	()	()	()	()
Foster	()	()	()	()	()
Cooper	()	()	()	()	()
Calver	()	()	()	()	()
Barham-Widds, L.	()	()	()	()	()
Davis	()	()	()	()	()
Dailey	()	()	()	()	()
Gruskos, D. (Alt. #1)	()	()	()	()	()
Kleiberg, R. (Alt. #2)	()	()	()	()	()

I hereby certify that the foregoing Resolution was adopted by the Planning Board of the Borough of Oceanport at its meeting of March 12, 2024.

Jeanne Smith, Secretary

KEK/dmp

Z:\KevinKennedyLaw\Municipal\Oceanport Planning Board\Pierce (patio-fireplace-encroachment into easement)\Resolution.doc



Planning/Zoning Combined Board

PO Box 370
Oceanport, NJ 07757

SCHEDULED

RESOLUTION - PB (ID # 3147)

Meeting: 03/12/24 07:00 PM
Department: Planning/Zoning Board
Category: PB Resolutions
Prepared By: Jeanne Smith
Initiator: Jeanne Smith
Sponsors:
DOC ID: 3147

8.3

Resolution of Approval - 30 Pocahontas Ave

RESOLUTION

**BOROUGH OF OCEANPORT PLANNING BOARD
 APPROVAL OF THE APPLICATION OF PAUL KIERNAN
 30 POCAHONTAS AVENUE / BLOCK 19, LOT 14.02
 APPROVED FEBRUARY 27, 2024
 MEMORIALIZED MARCH 12, 2024**

Introduction

WHEREAS, Paul Kiernan has made Application to the Oceanport Planning Board for the property designated as Block 19, Lot 14.02, commonly known as 30 Pocahontas Avenue, Oceanport, NJ, within the Borough's R-3 Zone, for the following approval: Bulk Variance relief associated with a request to install a deck on a single-family home; and

Public Hearing

WHEREAS, the Board held a Public Hearing on February 27, 2024, Applicant having filed proper Proof of Service and Publication in accordance with Statutory and Ordinance Requirements; and

Evidence / Exhibits

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- *Planning Board Application, introduced into Evidence as A-1;*
- *Zoning Officer Denial Letter, dated October 11, 2023, introduced into Evidence as A-2;*
- *Plot Plan, prepared by William E. Fitzgerald, last revised October 3, 2023, consisting of one (1) sheet, introduced into Evidence as A-3;*
- *Architectural Plans, prepared by Brian Fitzgerald, last revised September 19, 2023, consisting of four (4) sheets, introduced into Evidence as A-4;*
- *Foundation Location Survey, prepared by InSite Surveying, last revised September 12, 2023, consisting of one (1) sheet, introduced into Evidence as A-5;*
- *Colliers Engineering & Design Review Memorandum, dated January 24, 2024, introduced into Evidence as A-6;*

- Affidavit of Service; and
- Affidavit of Publication;

Witnesses

WHEREAS, sworn testimony in support of the Application was presented by the following:

- Paul Kiernan, Applicant, appearing pro se;
- Brian Fitzgerald, Architect;

WHEREAS, William H. R. White, III, P.E., P.P., CME, the Planning Board Engineer and Planner, was also sworn with regard to any testimony / information he would provide in connection with the Application; and

Testimony and Other Evidence Presented on Behalf of the Applicant

WHEREAS, testimony and other evidence presented by the Applicant and his representatives revealed the following:

- The Applicant is the Owner of the subject property.
- The Applicant has owned the subject property for approximately 1 year.
- Currently, a single-family home is in the process of being constructed at the site.
- Upon completion of the aforesaid construction process, the Applicant anticipates living at the site.
- The Applicant proposes to construct / install a deck.
- Details pertaining to the proposed improvements include the following:

Size:	26.5 ft wide x 17 ft deep (450SF)
Location:	Rear of dwelling
Materials:	Trex decking with gapped spaces to allow for drainage.
Covered?:	The proposed deck will not be covered.
Enclosed?:	The proposed deck will not be enclosed.

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Heigh Above Grade:	30 in. above grade.
Railing?:	Yes, the proposed deck will have railings.

- The Applicant will plant Evergreen trees or Green Giant trees so that the same can serve as a visual / noise buffer between the proposed deck and the adjacent property.
- The Applicant will also install a fence along the rear property line, so that the same can also serve as a visual / noise buffer between the Applicant's proposed deck and the neighboring property.
- The Applicant anticipates that the proposed deck will be constructed in the near future.
- The Applicant will be utilizing licensed contractors in connection with the construction process.

Variance

WHEREAS, the Application as presented, requires approval for the following Variance:

*REAR YARD SETBACK:
25 ft. required; whereas 10.9 ft. proposed;*

Public Comments

WHEREAS, there were no public comments, questions, statements, and / or objections issued in connection with the subject Application.

Findings of Fact

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Oceanport, after having considered the aforementioned Application, plans, evidence, and testimony, that the Application, is hereby **granted / approved with conditions**.

In support of its decision, the Planning Board makes the following Findings of Fact and Conclusions of Law:

1. The Oceanport Planning Board has proper jurisdiction to hear the within matter.

2. The subject property is located at 30 Pocahontas Avenue, Oceanport, NJ, within the Borough's R-3 Zone.

3. The subject parcel contains 12,000 SF (0.28 acres).

4. The subject parcel is located on the south side of Pocahontas Avenue, approximately 420 ft. east of Port-Au-Peck Avenue.

5. A 2-story single-family home is currently being constructed at the site.

6. Upon completion of the construction process, the site will contain the aforesaid 2-story home, a driveway, and a concrete walkway.

7. The Applicant proposes to construct a deck at the site.

8. Such a proposal requires Bulk Variance relief.

9. The Oceanport Planning Board is statutorily authorized to grant the requested relief and therefore, the matter is properly before the said entity.

10. With regard to the Application, and the requested relief, the Board notes the following:

- Single-family use is a permitted use in the Borough's R-3 Zone.
- A deck is a standard typical feature on many residential homes within the Borough of Oceanport.
- The Applicant proposes to construct a deck at the site so as to improve / increase the outdoor living space at the site.
- The Board Members understand the rationale for the proposal.
- The proposed deck will measure 26.5 ft. wide by 17 ft. deep.
- The deck appears to be a fairly standard sized deck.
- The deck will be constructed in such a place (rear of home) that the same should not likely be visible from the public street.
- The Application as presented requires a Rear Yard Setback Variance.
- The relevant rear yard calculations include the following:

Required Rear Yard Setback..... 25 ft.

Existing Rear Yard Setback.....27.9 ft

Proposed Rear Yard Setback.....10.9 ft.

- Per the testimony / evidence presented, the approved Rear Setback will not be dramatically different from other Rear Setbacks in the area.
- The proposed deck will nicely complement the house which is under construction.
- The deck has been designed with gapped Trex material, so as to facilitate drainage.
- At the request of the Board Members, the Applicant agreed to place sufficient landscaping / trees along the rear and side property lines, so as to minimize any visual / noise impact to the neighboring property.
- The Board Members specifically insisted upon 6 ft. tall trees, with minimum spacing requirements, so as to further minimize the possibility of any adverse impact associated with the non-conforming deck approved herein.
- Additionally, as a condition of the within approval, the Applicant is required to perpetually maintain / replace / replant the aforesaid landscaping, so as to ensure there is a permanent buffer.
- The Board Members also required the Applicant to install a 6 ft. high compliant fence along the rear property, so that the same can further serve as a visual / noise buffer between the Applicant's non-conforming deck and the adjacent property.
- Subject to the conditions set forth herein, approval of the within Application will not adversely affect the privacy of the Applicant and / or the neighbors.
- The Application as presented complies with prevails lot coverage / building coverage requirements.
- Subject to the conditions set forth herein, the Applicant's site can physically accommodate the deck approved herein.
- Approval of the within Application will enhance the overall aesthetic appeal of the subject property.
- The improvement authorized herein will provide the Applicant with additional outdoor type of living space, resulting in a more modern and functional house.
- The materials for the proposed deck will architecturally / aesthetically match the existing structure.
- The Board finds that the proposed deck has been efficiently designed.
- The Board understands the need and rationale for the proposed deck.

- The location of the proposed deck is logical and practical.
- Subject to the conditions contained herein, the proposal, as approved herein, represents an appropriate and non-invasive fashion in which an existing structure can be updated / modified / improved / expanded, without causing substantial detriment to the public good.
- Approval of the within Application will improve the overall visual appeal of the existing structure.
- Per the testimony and evidence presented, there is a need for increased outdoor living type of space at the site.
- The Applicant submitted detailed plans of the proposed deck, which sufficiently described the appearance of the same. Additionally, subject to the conditions set forth herein, the proposed deck will comply with the Prevailing Building Code Requirements.
- Based upon the testimony/evidence presented, construction of the proposed deck will continue the pattern of existing development in the area.
- The subject Lot is an appropriate host for the expanded single-family home approved herein.
- Given the lay-out of the Lot and the existing home, the location of the proposed deck is appropriate and practical.
- Subject to the conditions contained herein, the proposed deck approved herein will not overpower / overwhelm the subject Lot.
- Subject to the conditions contained herein, the proposed deck approved herein will not overpower the site.
- Per the testimony and evidence presented, under the Borough's Prevailing Regulations the site is required to have a sufficient number of off-street parking spaces – and sufficient / compliant spaces are proposed. Thus, no Parking Variance is required in connection with the Application.
- The existence of sufficient and appropriate parking at the Site is an important consideration – and but for the same, the within application may not have been approved.
- Upon completion of the renovation process, the proposed home (with deck) will be consistent with other single-family homes in the area, on similarly sized lots.
- The Board notes that there were no public objections associated with the subject Application.

- The Board finds that sufficient testimony has been presented for the Application to be adjudicated – and the Board furthermore finds that, subject to the conditions contained herein, there is no need to elicit additional information to supplement the record.
- The architectural / aesthetic benefits associated with the proposed deck outweigh the detriments associated with the Applicant's inability to comply with the Specified Bulk Standards.
- Subject to the conditions set forth herein, the benefits associated with approving the within Application outweigh any detriments associated with the same.
- Approval of the within Application will have no known detrimental impact on adjoining property owners and, thus, the Application can be granted without causing substantial detriment to the public good.
- The deck improvement to be constructed herein will not be inconsistent with other decks located within the Borough.
- Approval of the within Application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.
- The Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(c) (Bulk Variances).

For the above reasons, and for the other reasons set forth in the public hearing process, the Board is of the unanimous opinion that the requested relief can be granted without causing substantial detriment to the public good.

Conditions

During the course of the Hearing process, the Board Members requested, and the Applicant has agreed, to comply with the following conditions:

- a. The Applicant shall comply with all terms, conditions, promises, and representations made at or during the Public Hearing Process.
- b. The Applicant shall work with the Borough Engineer so as to appropriately control / manage storm-water management at the site.
- c. The Applicant shall comply with the terms and conditions of the Board Engineer's Review Memorandum, dated January 24, 2024 (A-6).
- d. The Applicant shall cause the Plans to be revised so as to portray and confirm the following:

- The inclusion of a note confirming that there shall be no adverse light spill over onto adjacent properties;
 - The inclusion of a note confirming that there shall be no permanent enclosure of the deck, absent further / formal approval of the Oceanport Planning Board;
 - The inclusion of a note confirming that the new construction shall comply with all Prevailing FEMA / Flood Guidelines, if applicable;
 - The inclusion of a note confirming that grading and drainage details shall be reviewed and approved by the Board Engineer (if the grading at the site is to be changed / modified);
 - Confirmation that the Applicant shall install a zoning compliant 6 ft. high solid or estate fence along the rear property line. (The said fence shall be located within the Applicant's property line);
 - Confirmation that there shall be gaps between the Trex deck spaces (so as to facilitate drainage);
 - Confirmation that any lighting at the site shall be Dark Sky compliant;
 - Confirmation that 6 ft. Evergreen trees or Green Giant trees (with 2.5 ft – 3 ft. spacing) shall be planted as follows:
 - i. Starting at the right back rear corner of the property, for a distance of 75 ft. along the rear property line; and
 - ii. Starting at the right back rear corner of the property, for a distance of 28 ft. along the side property line.
- e. The Applicant shall perpetually maintain, replace, and replant the aforesaid landscaping at the site.
- f. The Applicant shall obtain any necessary permits (from the Borough of Oceanport) for the placement of any type of gas grill at the site.
- g. The Applicant shall comply with all prevailing Affordable Housing rules / regulations / contributions / directives, as required by the State of New Jersey, the Borough of Oceanport, COAH, the Court system, and any other Agency having jurisdiction over the matter.
- h. Upon completion of the improvement, if requested by the Board, or any agent thereof, the Applicant's professional representatives shall submit a Certification detailing that the deck has been installed per the approved

Plans, per the testimony presented, and per the terms and conditions of the within Resolution.

- i. The Applicant shall comply with all Prevailing Building / Construction Code Requirements.
- j. The Applicant shall comply with all on-site construction regulations as required by the Borough of Oceanport and any other Agency having jurisdiction over the matter.
- k. The Applicant shall obtain any applicable permits/approvals as may be required by the Borough of Oceanport - including, but not limited to the following:
 - Building Permit
 - Plumbing Permit
 - Electric Permit
- l. If applicable, the proposed structure shall comply with applicable provisions of the Americans with Disabilities Act.
- m. Prior to the issuance of Permits, unless waived, grading / drainage plans shall be submitted to the Board Engineer (for his review and approval) so as to confirm that any drainage / run-off does not go onto or otherwise adversely affect adjoining properties.
- n. The construction shall be strictly limited to the plans which are referenced herein, and which are incorporated herein at length. Additionally, the construction shall comply with Prevailing Provisions of the Uniform Construction Code and Applicable Provisions of the Building Code.
- o. The Applicant shall comply with all terms and conditions of the Review Memoranda, if any, issued by the Board Engineer, Borough Engineer, Construction Office, the Municipal Project Assistant, the Department of Public Works, the Bureau of Fire Prevention and Investigation, and / or other Agents of the Borough.
- p. The Applicant shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies - including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District. To the extent the within Application materially changes as a result of such outside approvals, then, in that event, the Applicant shall be required to return to the Planning Board for further review / approval.
- q. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate/required fees and taxes.
- r. If required by the Board / Borough Engineer and / or the NJMLUL, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Oceanport.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicant and / or his agents shall be deemed conditions of the approval granted herein, and any mis-representations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of the within approval.

BE IT FURTHER RESOLVED, that the Application is granted only in conjunction with the conditions noted above - and but for the existence of the same, the within Application would not be approved.

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicant's compliance with all other appropriate Rules, Regulations, and/or Ordinances of the Borough of Oceanport, County of Monmouth, and State of New Jersey.

BE IT FURTHER RESOLVED, that the action of the Board in approving the within Application shall not relieve the Applicant of responsibility for any damage caused by the subject project, nor does the Planning Board of the Borough of Oceanport, the Borough of Oceanport, or their agents / representatives accept any responsibility for the structural design of the proposed improvement or for any damage which may be caused by the development.

SUMMARY OF GRANTED VARIANCE RELIEF

REAR YARD SETBACK:

25 ft. required; whereas 10.9 ft. approved;

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03-12-24

This resolution memorializes an action taken at the regular meeting of the Oceanport Planning Board held on February 27, 2024 on roll call that evening by the following vote:

Offered by: _____

Seconded by: _____

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	()	()	()	()	()
Kahle	()	()	()	()	()
Widdis, C.	()	()	()	()	()
Foster	()	()	()	()	()
Cooper	()	()	()	()	()
Calver	()	()	()	()	()
Barham-Widds, L.	()	()	()	()	()
Davis	()	()	()	()	()
Dailey	()	()	()	()	()
Gruskos, D. (Alt. #1)	()	()	()	()	()
Kleiberg, R. (Alt. #2)	()	()	()	()	()

This resolution was offered by _____, seconded by _____, and adopted on roll call by the following vote:

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	()	()	()	()	()
Kahle	()	()	()	()	()
Widdis, C.	()	()	()	()	()
Foster	()	()	()	()	()
Cooper	()	()	()	()	()
Calver	()	()	()	()	()
Barham-Widds, L.	()	()	()	()	()
Davis	()	()	()	()	()
Dailey	()	()	()	()	()
Gruskos, D. (Alt. #1)	()	()	()	()	()
Kleiberg, R. (Alt. #2)	()	()	()	()	()

I hereby certify that the foregoing Resolution was adopted by the Planning Board of the Borough of Oceanport at its meeting of March 12, 2024.

Jeanne Smith, Secretary

KEK/cbs

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Planning/Zoning Combined Board

PO Box 370
Oceanport, NJ 07757

SCHEDULED

RESOLUTION - PB (ID # 3148)

Meeting: 03/12/24 07:00 PM
Department: Planning/Zoning Board
Category: PB Resolutions
Prepared By: Jeanne Smith
Initiator: Jeanne Smith
Sponsors:
DOC ID: 3148

8.4

Resolution of Approval - 502 Branchport Ave