

**TOWNSHIP OF BERKELEY  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING AGENDA  
SEPTEMBER 11, 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. MINUTES
- F. OLD/NEW BUSINESS:
  
- G. AGENDA

1. **Richard Rude & Kathleen Courter** **BOA# 13-5442**

Variance requested                      Undersized Lot, Front Side & Combined Side Setbacks and Lot Coverage

Project:    Construct a SFD

Block: 1716    Lot: 2376

Address: 23<sup>rd</sup> Avenue                                      Zone: R-50

Denial reads: **““Applicant proposes to construct a SFD on an undersized lot with 16.3’ front setback/25’ required, a 3.75’ side setback/5’ required, a 7.5’ combined setback/15’ required, and a 49.7% lot coverage/35% max. allowed. The lot currently has 2 non-conforming SFDs on site. The forward SFD is to be replaced and the rear SFD is to remain.**”

2. **Richard & Mary Burke** **BOA # 13-5443**

Variance requested    6 ft. high fence within front yard

Project    Construct a 6 ft. high fence within a front yard area

Block: 858.18    Lot: 13

Address: 40 Bridle Path                                      Zone: R-2—

Denial reads: **applicant proposes to install a 6’ high fence between a public street and a principal structure”.**

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



# Ernst, Ernst Lissenden

A New Jersey Corporation

Certificate of Authorization 24GA27927500  
Consulting Engineers, Planners & Surveyors  
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## PRINCIPALS

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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.

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

July 24, 2013

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

Re: **BOA # 13-5442**  
**Applicant: Richard Rude & Kathleen Courter**  
**Application: Construct a Single Family Dwelling**  
**Unit on an Undersized Lot with Front, Side,**  
**Combined Side Yard Setbacks and Lot Coverage**  
**Variances**  
**Block 1716, Lot 2376**  
**Fronting on: Twenty Third Avenue**  
**Zone: R-50**  
**EE & L Project No. 12B4533-7R-06**

Dear Ms. Kazmac:

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

The denial letter issued June 5, 2013 by the Zoning Official states "Applicant proposes to construct a SFD on an undersized lot with 16.3' front setback/25' required, a 3.75' side setback/5' required, a 7.5' combined setback/15' required, and a 49.7% lot coverage/35% max. allowed. The lot currently has 2 pre-existing non-conforming SFDs on site. The forward SFD is to be replaced and the rear SFD is to remain.

### A. Completeness

1. The applicant has submitted the following information:
  - A plan entitled "Property Survey, Lot 2376, Block 1716, Township of Berkeley, Ocean County, New Jersey", dated April 16, 2013, prepared by Najarian Associates.
  - A plan entitled "Plot Plan, Lot 2376, Block 1716, Township of Berkeley, Ocean County, New Jersey", dated April 16, 2013, prepared by Najarian Associates.
  - Architectural Sketch entitled "Richard Rude & Kathleen Courter, Reconstruction of The Rude/Courter Residence, 255 23<sup>rd</sup> Avenue, Berkeley Township, NJ", dated May 8, 2013, prepared by Gates Architectural Design, Inc.
  - Certified property owners list with 200' Radius Map.
  - An application with attachments.
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 **August 14, 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.

Re: BOA # 13-5442  
Applicant: Richard Rude & Kathleen Courter  
Application: Construct a Single Family Dwelling  
Unit on an Undersized Lot with Front, Side,  
Combined Side Yard Setbacks and Lot Coverage  
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Block 1716, Lot 2376  
Fronting on: Twenty Third Avenue  
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EE & L Project No. 12B4533-7R-06



## **B. General Comments**

The property is located on the south side of 23<sup>rd</sup> Avenue, approximately 80 ft. west of Bay View Avenue and it lies in the R-50 Zone and comprises an area of 3,750 s.f. At present, the property is occupied by two (2) one story dwellings and a concrete patio. The property is serviced by public water and sewer.

In accordance with the FEMA Advisory Base Flood Elevation Map the site is situated in zone "AE" with a base flood elevation of 9, with the Governor's January 24, 2013 declaration, the flood elevation is 10.

The applicant proposes to demolish the one story dwelling unit to the front of the property and construct a new elevated two-story dwelling in accordance with the new flood hazard elevation requirements with the first and second floor balconies on the rear of the dwelling. The site will be accessed by a proposed gravel driveway and existing water and sewer services will be utilized. The existing one story dwelling at the rear of the site shall remain.

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

1. The following non-conformities are grandfathered by Ordinance or are pre-existing:
  - a. Lot area: 5,000 s.f. is required; whereas 3,750 s.f. exists (Ordinance);
  - b. Lot frontage: 50 ft. is required; whereas 37.50 ft. exists (Ordinance);
  - c. Side yard setback: 5 ft. required; whereas 2.1 ft and 2.4 ft. exists (existing dwelling in rear);
  - d. Side yard setback (combined): 15 ft. is required; whereas 4.5 ft. exists (existing dwelling in rear);
  - e. Rear yard: 20 ft. is required; whereas 3.4 ft. exists (existing dwelling in rear);
  - f. Second dwelling on lot (pre-existing).
2. The following variances are required:
  - a. A variance for insufficient front yard setback is required; whereas 25 ft. is required and 16.3 ft. is proposed;
  - b. A variance for insufficient side yard setback is required; whereas 5 ft. is required and 3.75 ft. is proposed to the structure (previously for this SFD it was 2.4 ft.);
  - c. A side yard setback variance is also required as the proposed fireplace projects two (2) feet from the dwelling which is allowed, but three (3) feet distance from the side lot line is required and 1.75 ft. is proposed (Section 35-89.13 of the Ordinance).
  - d. A variance for insufficient side yard setback (combined) is required; whereas 15 ft. is required and 7.5 ft. is proposed and 5.5 ft. with fireplace (previously for this SFD it was 19.3 ft.);
  - e. A variance for exceeding lot coverage; whereas 35% is maximum allowed and 49.7% is proposed (previously 42%).
3. The applicant must provide testimony and proofs supporting the granting of the variances.
4. A waiver for not providing sidewalks along the entire property frontage is required.
5. A waiver for not providing concrete curbing along the edge of pavement is required.
6. It appears that there is an increase in impervious surfaces on the site which would produce a minor increase in runoff.
7. At present are there any drainage problems on the property, adjacent properties or in the street?
8. Is there a nearby drainage system for the site runoff?
9. Why is the finished floor elevation set at 15.02? It appears to be higher than the minimum required.
10. Where will the A/C unit be located for the proposed two-story dwelling?
11. What is the status of the existing one-story dwelling? Will it be removed?
12. The Board should be aware that it appears that both the A/C and outdoor shower attached to the one-story dwelling to remain abuts the adjacent property lines.

Re: BOA # 13-5442  
Applicant: Richard Rude & Kathleen Courter  
Application: Construct a Single Family Dwelling  
Unit on an Undersized Lot with Front, Side,  
Combined Side Yard Setbacks and Lot Coverage  
Variances  
Block 1716, Lot 2376  
Fronting on: Twenty Third Avenue  
Zone: R-50  
EE & L Project No. 12B4533-7R-06



13. The Board should be aware that the proposed distance between dwellings is noted as being 17.1 ft. (12.1 ft. from the balconies).
14. Will there be sufficient parking for the two-(2) dwellings?
15. How will the people residing in the existing dwelling access it?

**D. Plat Details**

1. Provide a distance from the proposed balcony to the existing dwelling.
2. Revise Note 19 to depict the correct FEMA Classification.
3. Plot Plan to show fireplace projection.

**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, and Engineering Departments, etc., if required.
2. The Applicant certifying that the proposed dwelling unit will not encroach into existing easements (i.e., shade tree, utility, drainage, etc.) without proper consent from the Township, or other party involved, if any.
3. The Applicant shall submit payment of any and all outstanding professional review fees of the Board and the Township.
4. The Applicant shall provide all required plans necessary to show compliance with all required Building Codes and Ordinances, to the Building Department at the time of the permit application.
5. Submission of a Grading Plan.

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

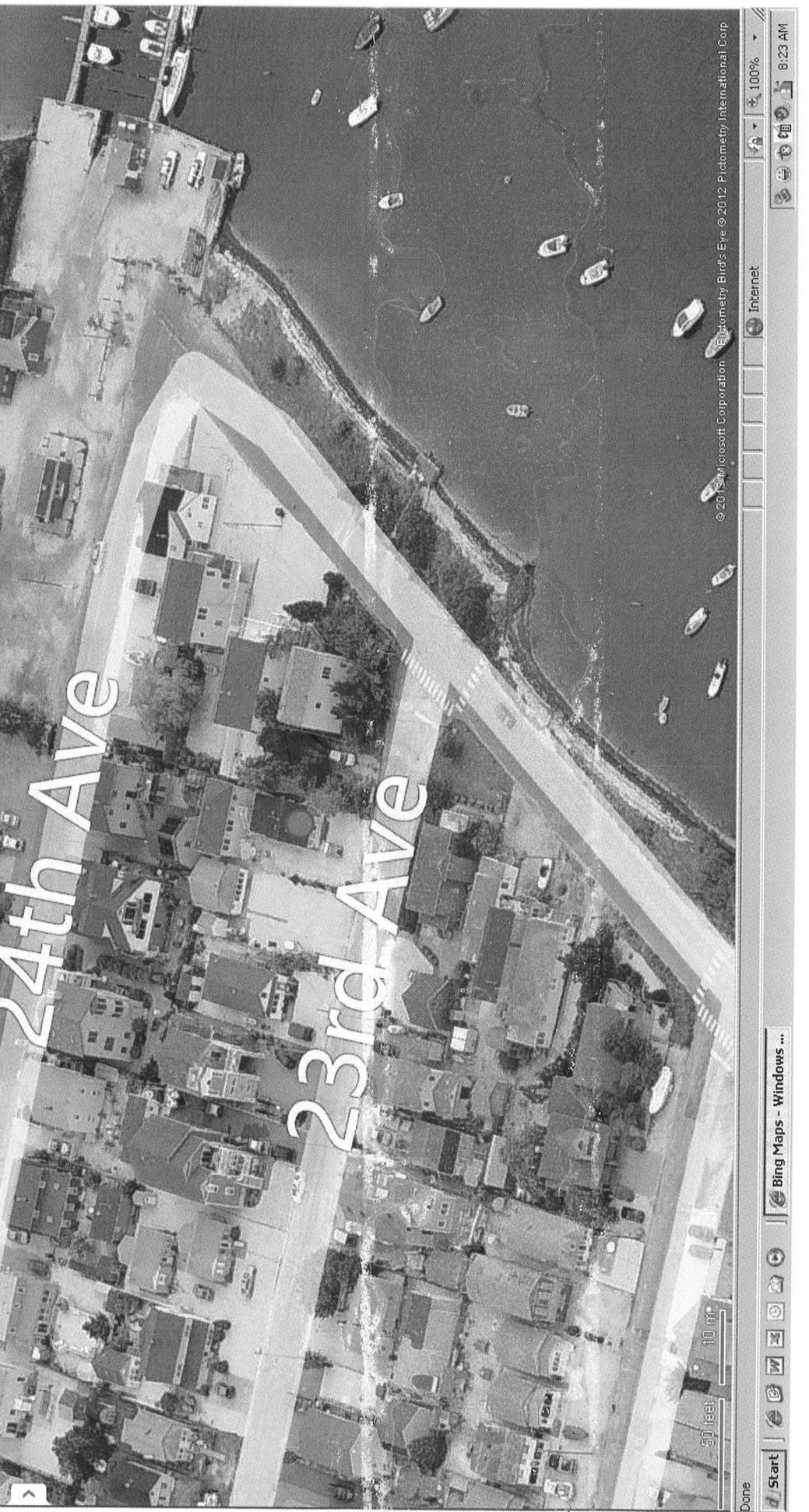
Should you have any questions or we can be of any further assistance on this matter, please do not hesitate to call our office.

Very truly yours,

John J. Mallon, PE  
Zoning Board Engineer

SA/JJM/jet

cc Ernie Peters, Remington, Vernick & Vena  
Alex Pavliv, Board Attorney  
Richard Rude & Kathleen Courter, Applicants  
Najarian Associates, Applicant's Engineer  
Harvey L. York, Applicant's Attorney  
Gates Architectural Design, Inc., Applicant's Architect  
File



# REMINGTON & VERNICK ENGINEERS AND AFFILIATES

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Secaucus, NJ 07094  
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(201) 624-2136 (fax)

August 27, 2013

Ms. Melissa Kazmac, Secretary  
**Berkeley Township Zoning Board**  
Pinewalk-Keswick Road, PO Box B  
Bayville, New Jersey 08721

**Re: Application No. 13-5442**  
**Construction Of Single Family Dwelling with 'c' Variance Relief**  
**Richard Rude & Kathleen Courter**  
**255 23<sup>rd</sup> Ave, South Seaside Park (Block 1716, Lot 2376)**  
Our File: 1506-Z-166

Dear Ms. Kazmac & Board Members:

REMINGTON, VERNICK & VENA has received the above captioned Application for review. Applicant seeks to demolish an existing single-family home on the Subject Property and construct a new single-family home to conform with new FEMA elevation requirements. The to-be-demolished home was destroyed by Superstorm Sandy.

While the Application materials indicate that Subject is located in the R-64 Zoning District, the completeness letters by the Board Engineer indicate that the property is actually in the R-50 Zone. This review proceeds under the assumption that the Engineer is correct. Subject is not located in the Pinelands.

This report consists of our review of the Subject Application for conformance with the Berkeley Township Land Development Ordinance (Chapter 35) and is limited to planning issues. Engineering and legal issues shall be reviewed by the Board Engineer and Solicitor, respectively.

Comments are limited to the information presented to date. The Applicant may present additional information and testimony at the Board hearing.

## I. OWNER & APPLICANT INFORMATION

**Owner & Applicant:** Richard Rude & Kathleen Courter  
61 King Road  
Roxbury, NJ 087850  
(201) 454-2000

## II. SUBMITTALS

TITLE	PREPARED / SIGNED / SEALED BY	DATE	DATE LAST REVISED
Application Transmittal Memo	Melissa Kazmac	7/9/13	
Application Submission Coverletter	Harvey L. York Novins, York & Jacobus	6/28/13	
Refusal of Permit	John Battisti Zoning Officer	6/5/13	

N:\SECRETAR\BERKZONE\2166\1506Z166 - Rude Bulk Variance - Appl#13-5442 - as submitted.doc

*Earning Our Reputation Every Day Since 1901*

TITLE	PREPARED / SIGNED / SEALED BY	DATE	DATE LAST REVISED
Berkeley Twp Zoning Board of Adjustment Application	Unsigned	Undated	
Appeal to Berkeley Twp Board of Adjustment	Richard Rude & Kathleen Courter	6/21/13	
Tree Removal Certification	Richard Rude	undated	
Site Inspection Permission Form		6/21/13	
Certification of Taxes Paid	Berkeley Twp Tax Office	undated	
Adjacent Property Listing w/ 200' Radius Map	Eric L. Zanetti Tax Assessor	6/11/13	
Property Survey Lot 2376, Block 1716 Township of Berkeley, Ocean County, New Jersey	Eric R. Glasser, PLS Najarian Associates	4/16/13	
Plot Plan Lot 2376, Block 1716 Township of Berkeley, Ocean County, New Jersey	Eric R. Glasser, PLS & Robert B. Kuhne, PE Najarian Associates	4/16/13	
Richard Rude & Kathleen Courter Reconstruction of the Rude / Courter Residence 255 3 <sup>rd</sup> Avenue Berkeley Township, NJ A-1: Preliminary Plans <sup>A</sup>	Joseph A. Gates Gates Architectural Design	5/8/13	
Completeness Correspondence	John J. Mallon, PE Ernst, Ernst & Lissenden	7/24/13	
		7/29/13	

A. A manual scaling of the drawings does not match the written scale on the Plan.  
***Applicant is asked to address this discrepancy.***

**II. ZONING**

A. Uses:

Subject is located in the R-50 Zoning District, which is governed by §36-96.3.

§36-96.3 permits single-family dwelling units. §35-89.4 prohibits more than one (1) residential building on the same lot. ***If Applicant can confirm the lawful pre-existence of the second dwelling unit, it is recommended that the Board issue a Certificate of Nonconformity to legitimize such use. If Applicant can not confirm lawful pre-existence of the second dwelling unit, 'd' variance relief appears to be required for two units on a single lot.***

B. Area & Bulk Standards: Rear building is not subject to this Application. Assuming its lawful pre-existence, any nonconformity would be pre-existing and therefore grandfathered. Accordingly, the following review addresses the proposed new (front) dwelling only.

ITEM	REQUIRED	PROPOSED	STATUS
Minimum Lot Area	5,000 s.f.	3,750 s.f.	Pre-existing Nonconformity <sup>1</sup>
Minimum Lot Frontage	50'	37.5'	Pre-existing Nonconformity <sup>1</sup>
Minimum Front Yard Setback	35' <sup>3</sup>	16.3'	<b>Variance Required</b>
Minimum Side Yard Setback	5' (ea) <sup>4</sup>	3.75'	<b>Variance Required (each)</b>
		3.75'	
	15' combined	7.5'	<b>Variance Required</b>
Minimum Rear Yard Setback	20'	40.7'	Conforms

The MLUL defines “peculiar and exceptional practical difficulties” and “exceptional and undue hardship” as:

- (a) [where] 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... would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property...[N.J.S.A. 40:55D-70c(1)]*

Under N.J.S.A. 40:55D-2, the MLUL enumerates as its purposes:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;*
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;*
- c. To provide adequate light, air and open space;*
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;*
- e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;*
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;*
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all NJ citizens;*
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;*
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;*
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;*
- k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;*
- l. To encourage senior citizen community housing construction;*
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;*

- n. *To promote utilization of renewable energy resources;*
- o. *To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.*

**Variance Justification**

Applicant has provided no justification for the variance requests. ***Applicant is asked to address these issues within the context of the requirements for variance relief detailed above.***

Any resubmissions in response to this report should be accompanied by a point-by-point response to all items, *with revisions on the plans clouded or highlighted to indicate changes.* In order to facilitate the Board's decision making process, Applicants are strongly encouraged to resolve as many items as possible prior to the hearing on this matter.

As always, Board members, Applicants and their professionals should feel free to contact me in our Pleasantville office if they have any questions or require additional information.

Respectfully Submitted,

**Remington, Vernick & Vena Engineers**



Stuart B. Wiser, P.P., AICP  
Corporate Associate  
Regional Director of Planning & Redevelopment

SBW:ag

cc: Alex Pavliv, Esq. - Board Attorney  
Jack Mallon, P.E. - Board Engineer  
Robert Kuhne, P.E. - Applicant's Engineer  
Harvey York, Esq. - Applicant's Attorney  
Richard Rude & Kathleen Courter - Applicant



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## PRINCIPALS

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

August 7, 2013

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

Re: **BOA # 13-5443**  
**Applicant: Richard & Mary Burke**  
**Application: Construct a 6 ft. High Fence within**  
**A Front Yard Area**  
**Block 858.18, Lot 13**  
**Fronting on: Bridle Path and Goldenrod Avenue**  
**Zone: R-200**  
**EE & L Project No. 12B4533-7B06**

Dear Ms. Kazmac:

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

The denial letter issued on June 14, 2013 state the "applicant proposes to install a 6' high fence between a public street and a principal structure".

### A. Completeness

1. The applicant has submitted the following information:
  - A plan entitled "Location Survey Map, Tax Map, Lot 13, Block 858.18, Township of Berkeley, Ocean County, New Jersey", dated February 5, 2013, prepared by DW Smith Associates, LLC.
  - A 200 ft. Radius Map, a Certified list of property owners within 200 ft. of the property.
  - An application and an 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 **September 11, 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 northwesterly corner of Bridle Path and Goldenrod Avenue intersection. The property lies within the R-200 Zone and comprises an area of 10,466 s.f. The site contains a two-story frame dwelling and is accessed by a paved driveway from Bridle Path.

The site lies in Flood Zone "X" (unshaded), which is an area determined to be outside the 0.2% annual chance flood plain. No wetlands appear to be on the property.

The applicant proposes to construct a 6 ft. high fence within the front yard setback area along Goldenrod Avenue approximately 10 feet from the edge of pavement which appears to be on the right-of-way line. The proposed fence line will enclose the backyard of the dwelling along the north, east and west sides of the property.

Re: BOA # 13-5443  
Applicant: Richard & Mary Burke  
Application: Construct a 6 ft. High Fence within  
A Front Yard Area  
Block 858.18, Lot 13  
Fronting on: Bridle Path and Goldenrod Avenue  
Zone: R-200  
EE & L Project No. 12B4533-7B06



**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; whereas 4 ft. maximum is allowed.
2. A variance is required for installing a privacy (solid) fence; whereas a minimum of 50% must be open.
3. The applicant must provide testimony and proofs supporting the granting of the variances.
4. The submitted survey does not show the actual location but a "yellow highlighted" in a general area. The applicant must testify to the exact location of the proposed fence. How far off the property lines will it be constructed?
5. The applicant should testify where the proposed fence will end. Does it totally enclose the backyard by being constructed all the way to the existing dwelling?

**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

SA/JJM/jet

cc Ernie Peters, Board Planner  
Alex Pavliv, Board Attorney  
Richard & Mary Burke, Applicant  
file

# 40 Bridle Path

Bayville, NJ 08721

4 bed / 3 bath 2,315 sqft Single-Family Home

For Sale / Resale

## \$345,300

\$1,691 / mo

Mortgage Center

[View Your Score](#) [Get Prequalified](#)



feedback

## Property Details

180+ Days on Trulia

185 views

### Home for sale in Bayville, NJ 345,300 USD

**40 Bridle Path** CAN BE READY FOR AUGUST! STANDING SPEC HOME w/Beautiful Partial STONE FRONT! EXPANDED KITCHEN w/42" CABINETS, GRANITE COUNTERS, STAINLESS STEEL APPLIANCES & HARDWOOD OR TILE IN FOYER, KITCHEN & BATHS. FINISHED BASEMENT w/DAYLIGHT WINDOWS! WELCOME TO HICKORY FARMS... THE JERSEY SHORE'S MOST EXCITING NEW COMMUNITY! Fabulous

Provided by: Weichert Realtors-Jackson via Point2  
 Broker: Weichert Realtors-Jackson  
 Listing Agent: Lisa Soubasis

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