



YOUR GOALS. OUR MISSION.

KNPB-R3000

June 25, 2024  
Via Email and Regular Mail

Mackenzie Bittle, Planning Board Secretary  
Borough of Keansburg  
29 Church Street  
Keansburg, NJ 07734

**Re: New Bulk Variance Requests  
Julia & William Luchsinger  
155 Maple Avenue  
Block 79, Lot 30  
Single Family Residential (R-5) Zone  
First Engineering Review**

Dear Ms. Bittle:

As requested, we have reviewed the above referenced application to raise the existing dwelling and construct an additional floor along with an attached rear deck. The new additional floor will contain three bedrooms and one restroom. The applicant has submitted the following documents in support of this application:

1. Keansburg Planning Board of Adjustment Site Plan Application Packet dated April 22, 2024.
2. Certification & Assessment of Taxes dated April 11, 2024.
3. Certified List of Property Owners within 200 Feet, dated April 16, 2024
4. Letter of Denial, prepared by Kathy Burgess, Assistant Zoning Officer, of the Borough of Keansburg Construction Office, dated March 27, 2024.
5. Building photographs, undated.
6. Sketch Architectural Plan for 155 Maple Avenue, undated, consisting of seven (7) sheets.
7. Location Survey for Lot 30 Block 79, prepared by Ronald L. Trinidad, P.L.S., of R&T Land Surveying, dated February 29, 2024, consisting of one (1) sheet.

#### **A. Project Description**

The subject property, also known as 155 Maple Avenue, is a developed interior lot located within the Single Family Residential (R-5) Zoning District with frontage along Maple Avenue to the south. The property currently contains a one-story single-family dwelling with an associated walkway, an asphalt driveway extending from Maple Avenue, a storage tent and a wood shed in the rear yard. The property is in the "AE" Flood Zone, with a flood elevation of 11 feet.

The applicant is seeking approval to raise the existing dwelling and construct an additional floor along with an attached rear deck. The new additional floor will contain three bedrooms and one restroom as depicted on the submitted sketched plans. The application was previously denied by the Borough Construction Office on March 27, 2024, citing nonconformity with the setback requirements of the R-5 Zoning District and enlargement of an already nonconforming structure.



## B. Bulk Requirements

In accordance with Section 22-5.5 of the Ordinance existing/proposed bulk deficiencies are noted as follows:

	DESCRIPTION	REQUIRED	EXISTING	PROPOSED
1	Minimum Lot Area	5,000 SF	3,750 SF <sup>(E)</sup>	<b>3,750 SF <sup>(V)</sup></b>
2	Minimum Lot Frontage	50'	50'	50'
3	Minimum Front Yard Setback	25'	10' <sup>(E)</sup>	<b>10' <sup>(V)</sup></b>
4	Minimum Side Yard Setback	7.5'	1.2 <sup>(E)</sup>	<b>1.2' <sup>(V)</sup></b>
5	Minimum Side Yard Setback - <i>Total</i>	15'	27.6'	27.6'
6	Minimum Rear Yard Setback	25'	24.2' <sup>(E)</sup>	<b>24.2' <sup>(V)</sup></b>
7	Minimum Lot Circle	35'	N/A	N/A
8	Min. Gross Residential Ground Floor Area	N/A	N/A	N/A
9	Maximum Lot Coverage – <i>Principal Bldg.</i>	25%	19% <sup>(C)</sup>	19% <sup>(C)</sup>
10	Maximum Lot Coverage – <i>All</i>	50%	37% <sup>(C)</sup>	37% <sup>(C)</sup>
11	Maximum Building Height	2 ½-Story (35')	1-Story	<b>3-Story <sup>(V)</sup></b> <b>(32')</b>
12	Minimum Improved Off-Street Parking*	3	2	1

(E) – Existing Nonconformity

(C) – Calculated

(W) – Waiver

(V) – Variance

NA – Not Applicable

NS – Not Specified, the applicant shall confirm this dimension.

\*Section 22-9.3 of the Ordinance requires a total of two (2) Off-Street Parking Spaces for the subject development. Section 22-9.3. a.5 states “*A one-car garage and driveway combination shall count as 2 off-street parking spaces, provided the driveway measures a minimum of thirty (30') feet in length between the face of the garage door and the sidewalk or thirty-five (35') to the curbline. Two-car garage and driveway combination shall count as 4.0 off-street parking spaces, provided the minimum width of the driveway is twenty (20') feet and its minimum length is as specified above for a one-car garage.*”

It is noted from the survey that the property currently contains an asphalt driveway, measuring approximately twenty (20') feet long from the sidewalk toward the front yard of the property and has capacity for one (1) off-street parking space. It is further noted that one (1) additional on-street parking is available along the frontage of the property. At this time, the applicant is not proposing any improvements to the existing driveway and based on the proposed improvements, three (3) off-street parking spaces are required. The applicant should provide testimony regarding the deficient off-street parking for the property.

## C. Variance Considerations

In order to approve this application, the Board would have to grant variances for the bulk conditions and pre-existing non-conformities noted in the chart above, as well as variances per the below Sections of the Ordinance regarding construction of non-compliant structures, as listed below:





1. Section 22-5-2.c of the Ordinance states that no building or structure shall hereafter be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land or building or portion of a building or structure to be used, designed, or arranged to be used for any purpose unless in conformity with all of the regulations herein specified for the district in which it is located. **The applicant proposes to enlarge an existing building which does not conform with R-5 Zoning District setback requirements.**
2. Section 22-5.5.e of the Ordinance states that standards and regulations shall be in accordance with the schedule referred to in Section 22-5. **We note the property is an undersized lot with an area of 3,570 square feet, whereas the minimum lot area required in the R-5 Single Family Zone is 5,000 square feet. In addition, the proposed improvements do not conform with the R-5 Zoning District setback requirements.**
3. Section 22-7.3.c of the Ordinance states that no nonconforming use may be expanded. **The existing dwelling is a nonconforming use and is proposed to be expanded.**

1. Positive Criteria for “c(1)” Hardship Variance

The finding of a “c(1)” hardship would address the following:

- a. *by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or*
- b. *by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or*
- c. *by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, or the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.*

It should be noted that the finding of the hardship must be for the specific property in question (i.e., it must be unique to the area). Note also that a hardship variance cannot be granted by a self-created hardship or personal hardship of the applicant.

2. Positive Criteria for “c(2)” flexible variance

The finding of a “c(2)” flexible variance to permit relief from zoning regulations where an alternative proposal results in improved planning would address the following:

- a. *The purposes of the MLUL would be advanced by the deviation, and*
- b. *The benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.*

The finding of the benefits must be for the specific property in question—it must be unique to the area. The zoning benefits resulting from permitting the deviation(s) must be for the community and not merely for the private purposes of the owner. It has been held that the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Notwithstanding the above, the Board should consider only those purposes of zoning that are actually implicated by the variance relief sought.



3. The Municipal Land Use Law (NJSA 40:55D-70) requires the applicant to satisfy *both* components of the negative criteria:
  - a. *The proposal will not create a "substantial detriment to the public good"; and*
  - b. *The proposal will not create a "substantial detriment to the zone plan and zoning ordinance."*

In order for the Board to approve any "d" variances, the applicant must satisfy the following:

#### *Positive Criteria*

There are two prongs to the positive criteria that the applicant must satisfy, as follows:

***That the site is particularly suited to the use.*** The applicant must prove that the site is particularly suited to the use.

***There are special reasons that allow a departure from the zoning regulations in this particular case.*** The applicant must prove that special reasons support the grant of the variance. The only acceptable special reasons for the grant of a "d" variance would be proof that the variance promotes the purpose of zoning, or proof of undue hardship. The purposes of zoning are established by the Municipal Land Use Law (N.J.S.A. 40:55D-2) and the applicant must demonstrate that the variance promotes one or more of those purposes to establish special reasons. Alternatively, the applicant may offer as a special reason proof that that refusal to grant the variance would result in undue hardship. Proof of undue hardship for a "d" variance requires that the applicant prove that the property cannot be reasonably adapted to conform to the zone requirements.

#### *Negative Criteria*

There are two (2) prongs to the negative criteria that the applicant must satisfy, as follows:

***That the variance can be granted without substantial detriment to the public good.*** This prong requires an evaluation of the impact of the variance on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.

***That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance.*** The Board of Adjustment is precluded by the negative criteria from granting any "d" variance relief unless an applicant demonstrates that the variance will not substantially impair the intent and purpose of the zone plan. The process for zoning decisions is through the recommendations of the municipal master plan as implemented through zoning ordinances adopted by the governing body. This establishes the zones, standards, and requirements for the development of the municipality. The Board of Adjustment is precluded by the negative criteria from granting any "d" variance relief unless an applicant demonstrates that the variance will not substantially impair the intent and purpose of the zone plan. If the grant of a variance substantially alters the municipality's zone plan, the action is impermissible because it usurps the zoning power of the governing body and undermines the municipal planning process.

#### **D. Design Waivers**

1. The following design waivers are required:





- a. Section 22-8.5.a.1 of the Ordinance states that landscaping shall be provided as part of a site plan and subdivision, whereas no landscaping has been provided. The applicant shall indicate whether this requirement will be met or a design waiver required.
- b. Section 22-8.5.d.1 of the Ordinance requires street trees to be planted along all roadway frontages at intervals determined by the type of tree to be planted, whereas no landscaping has been provided. Street tree selection shall be made from the tree list contained in Ordinance Section 19-3. The applicant shall indicate whether this requirement will be met or a design waiver required.

#### **E. Technical Engineering Review**

1. The applicant has provided sketched architectural plans which depict the layouts for the second-floor addition and the elevated deck associated with the improvements. In addition, a survey of the property has been provided. Based on our review, the Applicant should provide a site plan/plot plan of the proposed improvements to include the following:
  - a. A zoning table indicating the required, existing and proposed bulk zoning requirements of the R-5 Zone for the proposed improvements on the property.
  - b. Finished floor elevation, spot elevations at all corners of the dwelling and property and roof leaders' locations.
  - c. Proposed utilities. If existing utilities will be reused, a note to that effect should be provided on the plan.
  - d. The rear yard setback of the proposed elevated deck in conformance with zoning district.
2. The applicant shall depict the location of the associated AC unit for the current dwelling on the property, if any and provide testimony if it is intended to be relocated as a result of the proposed improvements.
3. The proposed development will not disturb an area exceeding 1 acre, nor will it create more than a quarter acre of new impervious surfaces. Therefore, the project is not considered a "major development" as defined by NJAC. 7:8, and is not subject to the NJDEP Stormwater Management stormwater quantity, quality and recharge requirements of a major development.
4. The applicant shall provide testimony regarding the utility connections or improvements necessitated by the subject application. All proposed utility improvements shall be shown on the plans including proper trench restoration.

#### **F. General Comments**

1. The property is located within the "AE" flood zone with a Base Flood Elevation (BFE) of 11 feet. The applicant shall identify the elevation of the proposed first floor. We defer further review to the Flood Plain Administrator and Construction Official for any applicable building requirements accordingly.



2. The project site is located in the Coastal Area Facilities Review Act (CAFRA) Zone. The applicant shall comply with any applicable NJDEP requirements. We defer further review to NJDEP.
3. We defer to the Building Department for review of the architectural plans for ADA compliance.
4. The applicant shall confirm that there will be no adverse drainage impacts to adjacent properties because of the proposed improvements.
5. The applicant shall provide testimony regarding the location of the proposed electric meter. JCPL requires the meter to be located at or above the BFE 11'.
6. The following construction details shall be provided and comply with the standards of the Borough Ordinance:
  - a. Utility connections
  - b. Utility trench repair
7. The applicant should be aware that construction of habitable space below the base flood elevation could subject this space to inundation by floodwaters. This construction could also have an impact on the applicant's future flood insurance premiums. The applicant should clarify any/all uses of ground floor area.
8. If approved the applicant will be required to post all performance guarantees and inspection escrow as stipulated in the Development Regulations.

We reserve the opportunity to further review and comment on this application and all pertinent documentation, pursuant to testimony presented at the public hearing. If you have any questions or require additional information, please call.

Very truly yours,

T & M ASSOCIATES

ROBERT F. YURO, P.E., C.M.E.

BOROUGH OF KEANSBURG

PLANNING BOARD OF ADJUSTMENT ENGINEER

RFY:LZ:STF

cc: Kevin Kennedy, Esq., Board Attorney, email: (kennedylaw@verizon.net)  
Ed Striedl, Zoning Officer, email: (ed.striedl@keansburg-nj.us)  
Kathy Burgess, Assistant Zoning Officer, email: (Kathy.burgess@keansburg-nj.us)