

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.

- 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).

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);*

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: Mr. Kahle

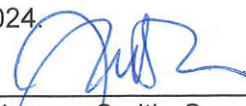
Seconded by: Ms. Barham-Widdis

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

This resolution was offered by Mr. Foster, seconded by Mr. Calver, and adopted on roll call by the following vote:

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Whitson	(✓)	()	()	()	()
Kahle	(✓)	()	()	()	()
Widdis, C.	()	()	()	(✓)	()
Foster	(✓)	()	()	()	()
Cooper	()	()	()	(✓)	()
Calver	(✓)	()	()	()	()
Barham-Widdis, 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