

Town of Westerly
Rhode Island

DEPARTMENT OF PLANNING
AND CODE ENFORCEMENT



Town Hall
45 Broad Street
Westerly, RI 02891

Zoning Narrative

Date: **July 7, 2017**
Petitioner: **Michael & Lisa Kane**
Location: **15 CRANDALL AVE**
Assessor's Plat/Lot '165-003'
Zoning Submittal No. 17/2573

SUMMARY:

The petitioner is requesting a **right side-yard and left side-yard variance** from §260-19 (Minimum Dimensional Requirements) of the Zoning Ordinance to **construct a three bedroom 68' x 24' single-family residence** at the above-referenced property.

FINDINGS OF FACT:

Existing Conditions

- A. Parcel 165-003 consists of approximately 50' x 150' (7500 SF) of land area with 50' of frontage on Crandall Avenue. This parcel is located in an HDR-10 (SFR in AE BFE=12 Flood Zone) Zoning District.
- B. Lot 165-003 contains no structures.

Current Proposal

- C. The applicant is proposing to **construct a three bedroom 68' x 24' single-family residence.**
- D. The proposed residence encroaches into the required ten foot (10') right side-yard setback and the required ten-foot (10') left side-yard setback associated with this property. The home requires a **2' right side-yard variance and a 2' left side-yard variance** from §260-19 Minimum Dimensional Requirements of the Zoning Ordinance.

Dimensional Information				
HDR-10 (SFR in Flood Zone) Dimensional Requirements	Primary Structure (Required)	Accessory Structure (Required)	Proposed	Variance(s)
Right Side-yard	15'	10'	13	2
Left Side-yard	15'	10'	13	2

- E. Within the Zoning Application, the petitioner states "The applicants, Lisa and Michael Kane, seek a two-foot sideline variance on each side of their 50' wide lot from 15' to 13' in order to accommodate a 24' wide home."
- F. At the 06-07-2017 Zoning Board meeting the applicant was granted their request of waivers for the following checklist items associated with this application:
 - i. Item C – Letter from a biologist indicating that there are no coastal or freshwater wetlands on or in proximity to the site.

RELIEF REQUESTED

§260-19 (Minimum Dimensional Requirements)

2' Left side-yard Setback Variance

2' Right side-yard Setback Variance

STANDARDS TO BE MET

In accordance with §260-33 Variances of the Zoning Ordinance, in granting variances the Zoning Board shall require that evidence satisfying the following standards be entered into the record of the proceedings:

1. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;
2. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
3. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan upon which this chapter is based; and
4. That the relief to be granted is the least relief necessary.

In addition to the above standards, the Zoning Board shall require that evidence be entered into the record of the proceedings that:

5. The hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

RECCOMENDATION

Staff is neutral on this application. At the 19 Jan 2017 Zoning Board meeting the applicants were denied a variance request that included a 4' front-yard setback variance, a 7.2' left side setback variance and a 3.5' right side yard setback variance. The Zoning Board's decision was later appealed to the Rhode Island Superior Court. This application is substantially different than the previous application. Further, this application seeks to replace the previous application and render moot the Superior Court proceeding. The application seeks a substantial reduction in the dimensional relief sought from the previous application and is more in line with the surrounding neighborhood's existing buildings. The central question that the applicant must prove and the Board must decide is that this is the minimum relief necessary for the applicant to "enjoy a legally permitted beneficial use of one's property."

ZONING

Application for Dimensional Variance

To: Westerly Zoning Board of Review
Town Hall – 45 Broad Street
Westerly, RI 02891

Date: May 30, 2017

The undersigned hereby applies to the Westerly Zoning Board of Review for a **dimensional variance** pursuant to the provisions of § 260-33 of the Westerly Zoning Ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Applicant(s): Kane, Michael C. and Lisa A. Address: 12 Somerset Lane
Old Lyme, CT 06371
Owner(s): same Address: same
Lessee: N/A Address: N/A

- 1. Filing instructions:
 - a. Original application and 10 copies, typed or legibly printed, must be filed with the Zoning Office in accordance with the minimum time required to post adequate notice.
 - b. A filing fee in the amount of **\$150**, plus legal advertising and recording fees, shall accompany an application to the Zoning Board of Review to cover the costs of processing (payable to "Town of Westerly – Zoning"). In addition to the \$150 fee, the applicant shall also be responsible for all additional costs, if any, incurred by the town in the course of review of this application, such as third-party review, cost of additional advertising and stenographic fees, and will be billed when the final costs have been determined.
 - c. All required checklist items for a **dimensional variance** must accompany the application in order to be considered a complete application.

2. Location of premises: 15 Crandall Avenue, Misquamicut

3. Plat: 165 Lot: 3 Zoning District: HDR-10 (FH)
911 Address: 15 Crandall Avenue, Westerly, RI 02891

4. Dimensions of lot: (frontage) feet by (depth) feet; Area (square feet or acres):
50' x 150' (7,500 sf)

5. Present use of premises: vacant

6. Proposed use of premises: single family residence

7. Is there a building on the premises at present: no

ZONING

8. How long have you owned the premises: approximately 4 years (July 2013)
9. Year that lot was platted and recorded: (prior to 1920's)
10. Have you submitted plans to the Zoning Inspector: Yes

11. Has a permit been refused: Yes If a permit has been refused, attach a copy of the denial in writing.

12. Size (in square feet) of all existing buildings and accessory structures:
N/A

13. Size (in square feet) of all proposed buildings and accessory structures:
First Floor: 1,193 sf Building, 254 sf Front Deck, 240 sf Rear Deck
Second Floor: 1,185 sf Building, 34 sf Front Deck, 35 sf Rear Deck

14. Indicate the number of families to reside in the building: One

15. Describe the extent of the proposed alterations: Construction of single-family residence on lawful pre-existing sub-standard lot.

16. Indicate the section of the Westerly Zoning Ordinance under which application for **dimensional variance** is made:
260-33 (260-Attachment 10)

17. State what relief is sought (dimensions, in number of feet):
Side: ^(N) 2 Side: ^(S) 2 Rear: 0 Front: 0 Height: 0

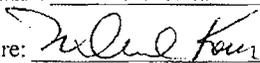
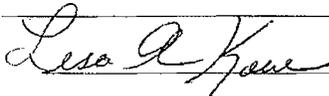
18. Clearly state the grounds for which this **dimensional variance** is sought:
See narrative

19. Request for waiver: Indicate checklist items that are requested to be waived by the Zoning Board and the reasons for the request:

C) Letter from biologist

Respectfully submitted:

Print Name: Michael C. and Lisa A. Kane

Signature:  

Address: 12 Somerset Lane, Old Lyme, CT 06371

Phone: 860-227-4052

NARRATIVE

The applicants, Lisa and Michael Kane, seek a two-foot sideline variance on each side of their 50' wide lot from 15' to 13' in order to accommodate a 24' wide home.

The Rhode Island Zoning Enabling Act (Chapter 42-24, RIGL) includes Section 42-24-41 which requires evidence satisfying the following standards to obtain such a dimensional variance:

'(d)

(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in §45-24-30(16);

(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;

(3) That the granting of the requested variance will not alter the general character of the surrounding area of impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based; and

(4) That the relief to be granted is the least relief necessary."

* * * *

“(e)

* * * *

(2) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.”

The authority of towns and cities in Rhode Island to enact Zoning Ordinances is derived from said Chapter 42-24, RIGL.

Section 260-33, Variances, (D) and (E), of the Westerly Zoning Ordinance is generally in accord with the above statutory standards, except that in Section 260-33 (E)(2), after the terms “shall amount to a mere inconvenience” it states “which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one’s property”. This phrase in the Westerly Zoning Ordinance is a vestige from the

initial adoption of the Rhode Island Zoning Enabling Act of 1991, Section 45-24-41(d)(2).

In 2002, the language was amended striking the “no other reasonable alternative” definition of more than a mere inconvenience. Therefore, according to statute, the proper test to apply to an application for a dimensional variance is whether the hardship the applicant would suffer if the variance is not granted amounts to more than a mere inconvenience. This statutory change and the resulting reduced standard to be applied was recognized and accepted by our Supreme Court in Lishio v. Zoning Board of Review of the Town of North Kingstown, 818 A.2d 687 (RI, 2003).

In Lishio, at 691-692, the Court held that the impact of this statutory language change reinstated the judicial line of cases with respect to dimensional variance which began with Viti v. Zoning Board of Review of the City of Providence, 166 a.2d 211 (RI 1960), saying:

“We note that a recent amendment to §45-24-41(d)(2) requires the applicant to demonstrate only ‘that the hardship [the applicant would suffer] if the dimensional variance is not granted amounts to more than a mere inconvenience.’ The new language in the 2002 amendment reinstates the judicially created *Viti* Doctrine, *Viti v. Zoning Board of Review of Providence*, 92 R.I. 59, 64-65, 166 A.2d 211, 213 (1960), which held that for an applicant to obtain a dimensional variance (also known as a deviation), the landowner needed to show only an adverse impact that amount to more than a mere inconvenience. See *Sciacca v. Caruso*, 769 A.2d 578, 582 (R.I. 2001); *Gara Realty, Inc. v. Zoning Board of Review of South Kingstown*, 523 A.2d 855, 858 (R.I. 1987); *DeStefano v. Zoning Board of Review of Warwick*, 122 R.I. 241, 246, 405 A.2d 1167, 1170 (1979). During the *Viti* era, landowners who wanted to establish a right to dimensional relief were not required to demonstrate a loss of all beneficial use of the parcel in the absence of a deviation nor was the zoning board required to find that the dimensional relief served the public’s welfare or convenience. *Viti*, 92 R.I. at 64-65, 166 A.2d at 213. The *Viti* Doctrine was superseded by the 1991 amendment (P.L.1991, ch. 307, §1) to chapter 24 of title 45, see *von Bemuth*, 770 A.2d at 400, but recently has been given new life by the General Assembly.”

Limiting the width of a modern single family dwelling to less than 24’ is more than a mere inconvenience. This assertion is supported by the development of the 200’ notice area surrounding the Kane property.

Excluding the subject, the area is comprised of 28 lots. One lot, immediately across Crandall Avenue from the Kane property, is improved with a 27 unit time-share resort. Single family homes exist on the remaining 27 lots. Ten of these existing homes on these lots were constructed in or before 1935. Only two of these homes have a width less than 24'. The other eight have an average width of 30'. None of the ten houses, including the two which are less than 24' wide, meet all the current setback requirements.

The 17 existing homes on the remaining lots were constructed since 1935. None of the homes have a width less than 24 feet.

None of the 27 lots meet all the current setback requirements. The average width of the 27 single family homes is 32 feet. Applicants seek a width of only 24' for their home.

Additionally, the fact that the applicants knew that the lot in question was narrow at the time they made their purchase does not implicate Section 45-24-41(d)(2) that the "hardship" is "the result of any prior actions of the applicant".

Sixty years ago in Denton v. Zoning Board of Review of City of Warwick, 86 R.I. 219, 223, 133 A.2d 718, 720 (RI 1957) with respect to a "true" variance stated:

"We do not agree with the proposition that an application for a variance must be denied because the applicant knew when he purchased the land that its use was limited by zoning restrictions".

The Court reiterated this holding in DeStefano v. Zoning Board of Review of City of Warwick, 122 RI 241, 405 A.2d 1167 (R.I. 1979):

"Finally, we observe that both the respondent and the trial court also relied upon the fact that the petitioners allegedly knew that the lot in question was undersized at the time they made the purchase. This factor cannot be employed as support for the denial of an application. See Denton v. Zoning Board of Review, 86 R.I. 219, 223, 133 A.2d 718, 720 (1957)".

The lot of the applicants and those on Crandall Avenue were created by the Crandall Avenue Plat, which is recorded at Plat Book 2, Page 4, in 1894. The lots were generally 50 feet wide and of various depths. The subject lot was conveyed by Benjamin Crandall to Martha Lawton on June 15, 1906 at Book 40, Page 335, together with three other lots in the plat all described as 50' x 200'. Martha Lawton subsequently conveyed

the subject lot, as currently configured, to Amalie Clemens and Martin Clemens on October 29, 1914, at Book 42, Page 486, and described as 50' x 150'.

The first Zoning Ordinance in the Town of Westerly was adopted in 1925. This first Zoning Ordinance placed the lots in the Plat, including the applicants' lot, in the Residence B Zoning District. The Residence B district required 6,000 sq. ft. area with a minimum lot width of 50'. The lot, 7500 sq. ft. and 50' frontage, thus conformed with zoning. It further provided that in the Residence B district:

“For a single family dwelling the width of a side yard shall be not less than 3 feet and the sum of the widths of the two side yards shall be not less than 20 percent of the width of the lot for any lot under 60 feet in width”. See Chapter 22, Zoning, Town of Westerly Ordinances of 1925, Section 14.1.

Hence, the total required side yard was established at 10' with at least 3' on one side.

During the period when the 1925 Zoning Ordinance was applicable, houses were constructed on abutting properties to the subject property. The home on Assessor's Plat 165, Lot 4, currently owned by Peter Kiman, was constructed in 1945. The home on Assessor's Plat 165, Lot 2, currently owned by Deborah Kernicki and Gardner Family Irrevocable Trust, was constructed in 1955. Both houses conformed to the then existing zoning setback regulations.

The current Kiman house was constructed 3.9' from its boundary with Kane and 18.1 feet from its southern boundary.

The home on the current Kernicki/Gardner property was constructed 5.9' from its boundary to the north and 11.1' from its boundary with the current Kane property.

Both the Kane property and the current Kiman property were subsequently acquired by Dominick Pingatore and Rosie Pingatore.

The Kiman property was acquired by the Pangatores as Tenants-in-Common by deed dated August 3, 1946, recorded at Book 64, Page 303 in the Westerly Land Evidence Records, which recited the conveyance of the land “with buildings thereon”.

The current Kane property was acquired by them as Joint Tenants by deed dated September 23, 1952, recorded at Book 71, Page 242 in the Westerly Land Evidence Records. Consistent with the above, it does not reference that any building existed

thereon.

While there are a myriad of other title equitable and legal reasons why the two Pingatore lots have not merged under subsequent zoning ordinance amendments, the clearest is that Section 260-32(E)(1) protects a lot “lawfully created by deed or plat prior to the enactment of any Zoning Ordinance”. As noted above, the current Kane lot of 50’ x 150’ was created by deed of Martha Lawton in October 29, 1914, eleven years prior “to the enactment of any Zoning Ordinance” in the Town of Westerly.

Moreover, the merger provision of Section 260-32(E)(2) applies only if “two or more undeveloped contiguous lots of record are in single ownership at the time of the adoption of this Zoning Ordinance. . .and if. . .the lots do not meet the minimum lot size or frontage requirements”. Here, when Zoning was initially adopted, both lots conformed; a home was later erected on one, so that when the minimum lot size was increased in 1965, there were not two or more “undeveloped contiguous lots of record. . .in single ownership”.

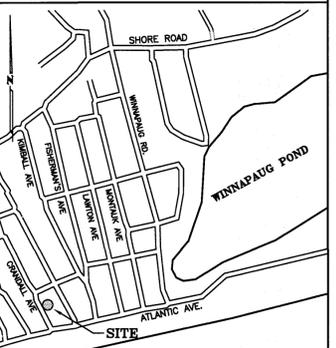
[In a “Decision” filed in the Land Evidence Records of the Town of Westerly on January 19, 2017, this Board, by a vote of three in favor and two opposed denied applicants the following requested relief:

- 1) a 4’ front-yard setback variance;
- 2) a 7.2’ left side-yard setback variance; and
- 3) a 3.5’ right side-yard setback variance.

That Decision has been appealed to the Rhode Island Superior Court. (Kane v. Zoning Board of Review of the Town of Westerly, et al, C.A. No. WC-2017-0055)

The within application is substantially different. It does not request a front-yard variance. It reduces the request for a left side-yard variance setback from 7.2’ to 2’, a reduction of 360%, and it reduces the request for a right side-yard variance from 3.5’ to 2’, a 57% reduction.

A favorable decision with respect to this application will render the Superior Court appeal moot.]



LOCATION MAP 1"=1200'

- GENERAL NOTES:**
- REFERENCE IS HEREBY MADE TO A DEED FROM SUSAN RINALDI AND KATHLEEN MCDERMOTT, CO-TRUSTEES TO MICHAEL C. KANE AND LISA A. KANE DATED JULY 18, 2013 AND RECORDED IN TOWN OF WESTERLY LAND EVIDENCE BOOK 2013 AT PAGE 15580.
 - REFERENCE IS HEREBY MADE TO THE FOLLOWING PLAN OF RECORD:
 - PLAN OF LOTS LOCATED ON CLARK AVENUE, PLEASANT VIEW, ON LAND OF SAMUEL H. DAVIS SCALE: 100 FEET TO AN INCH, MAY 1919 THOMAS MCKENZIE, C.E. WESTERLY, R.I.
 - PLAN OF B.F. CRANDALL, 1884 PLAT BOOK 2 PAGE 4, DOCUMENT #10000376
 - BEARINGS AND NORTH ARROW ORIENTATION ARE REFERENCED TO A MAGNETIC OBSERVATION TAKEN APRIL 8, 1996.
 - THE SUBJECT PARCEL LIES WITHIN AN AE SPECIAL FLOOD HAZARD, WITH A BASE FLOOD ELEVATION OF 12 AS SHOWN ON THE FLOOD INSURANCE RATE MAP, WASHINGTON COUNTY, RHODE ISLAND (ALL JURISDICTIONS), PANEL 254 OF 368, MAP NUMBER 44009C0254J, MAP REVISED: OCTOBER 16, 2013.
 - LOCUS PARCEL IS SERVICED BY MUNICIPAL WATER SUPPLY, PRIVATE OWTS AND GAS SERVICE PROVIDED BY NATIONAL GRID.

PLAN REVISIONS

REV. NO.	DATE	DESCRIPTION	DWN BY	CHK BY

SCALE: 1"=10' DRAWN BY: PHH
 CA JOB # 213012 CHECK BY: SFC
 MAY 24, 2017

ISSUED FOR PERMITTING

KANE RESIDENCE

DIMENSIONAL VARIANCE PLAN
 15 CRANDALL AVENUE
 PLAT 165 LOT 3
 WESTERLY, RHODE ISLAND

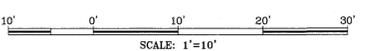
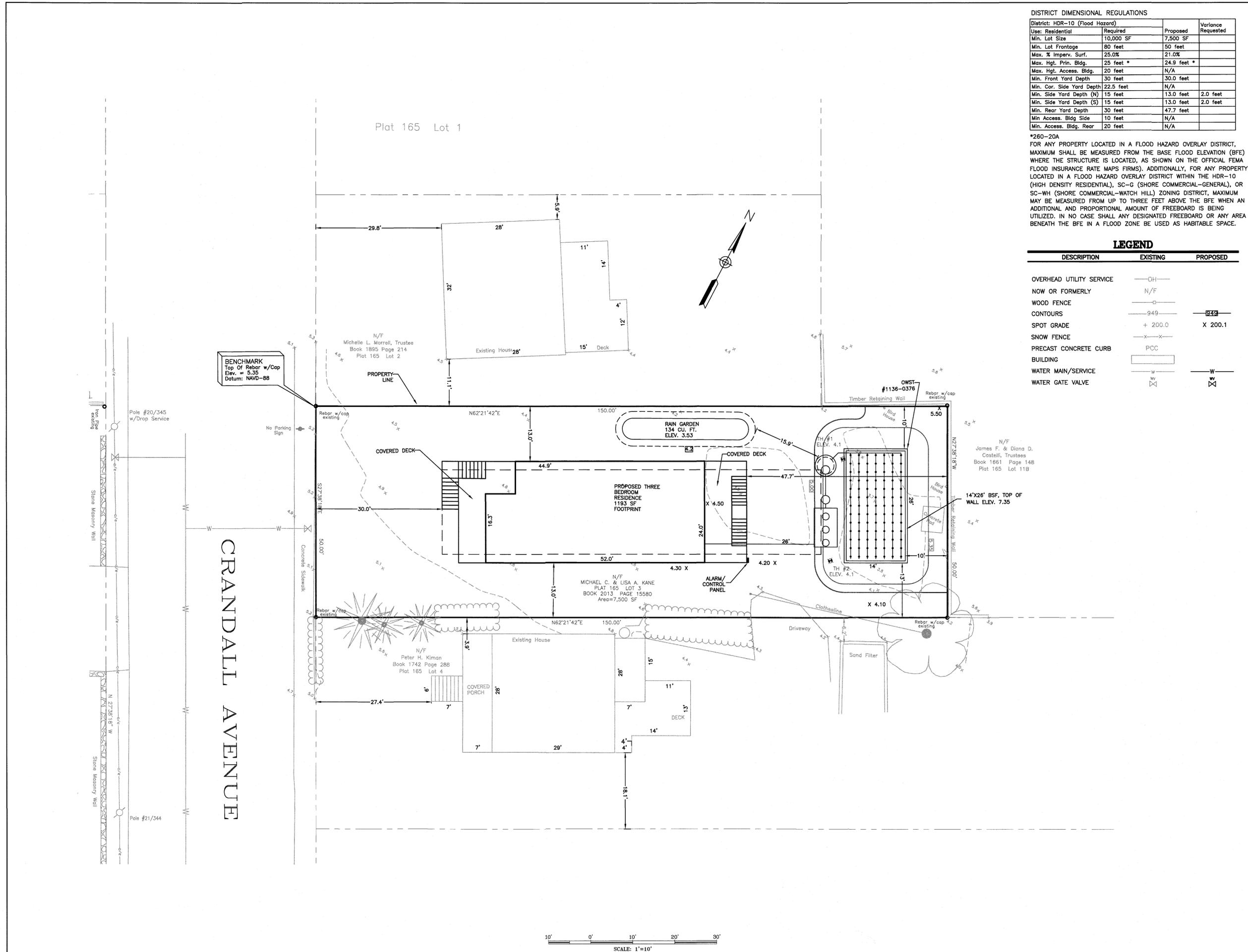
PREPARED FOR
MICHAEL KANE

SERGIO F. CHERENZIA
 No. 9238
 REGISTERED PROFESSIONAL ENGINEER (CIVIL)
 C-1
 SHEET 1 OF 2
 CHERENZIA & ASSOCIATES, LTD.

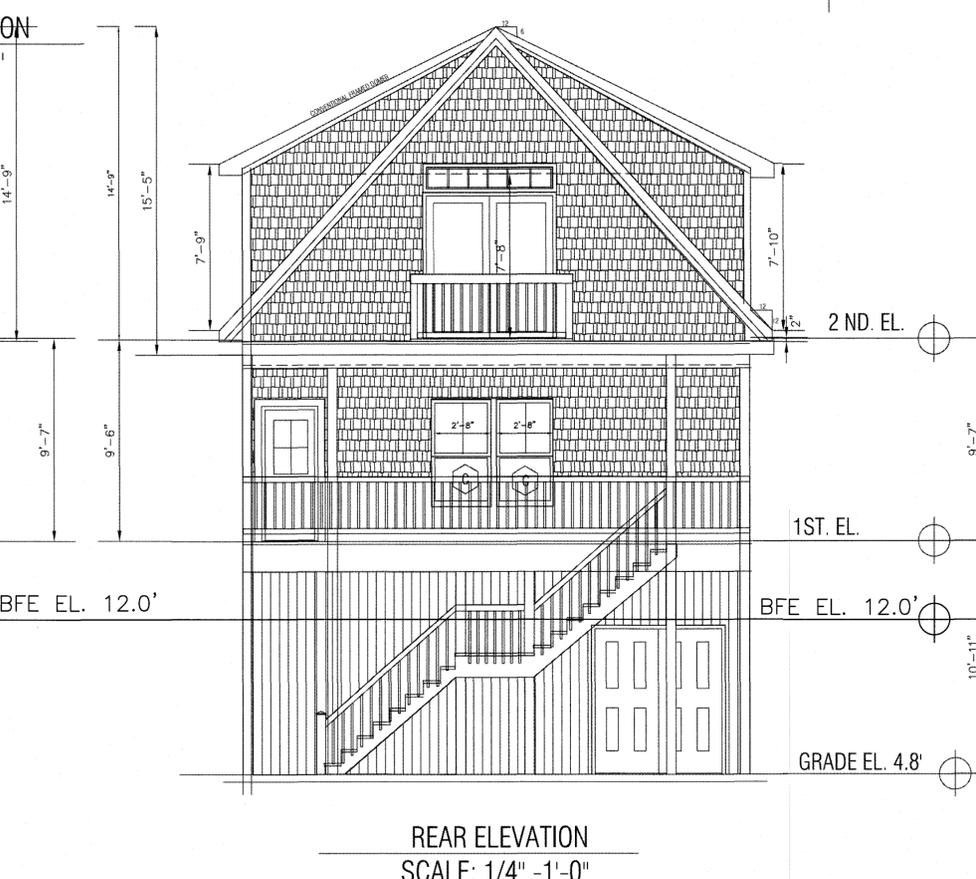
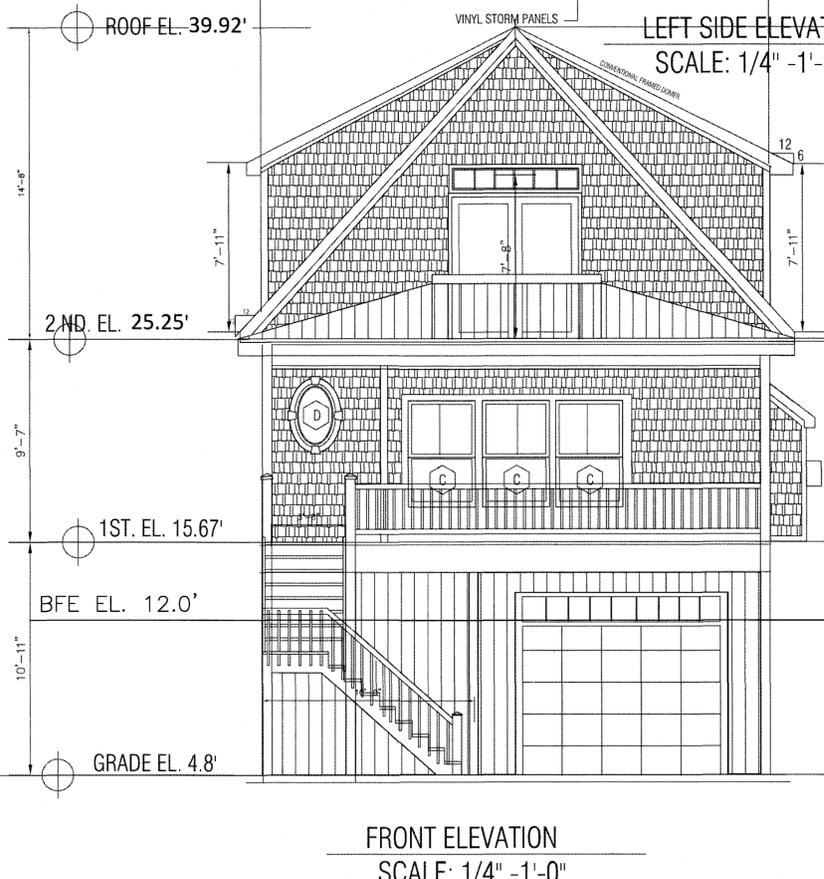
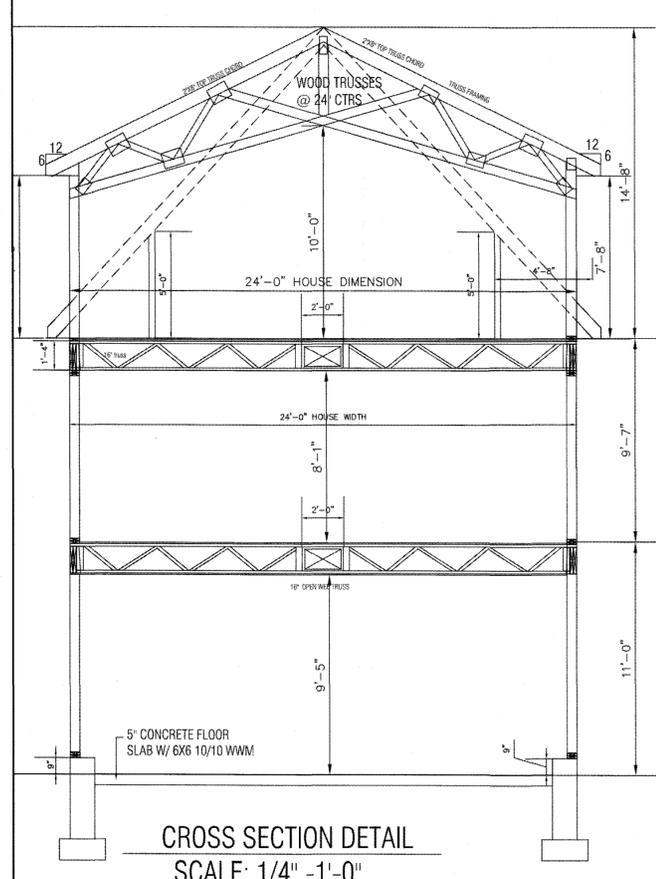
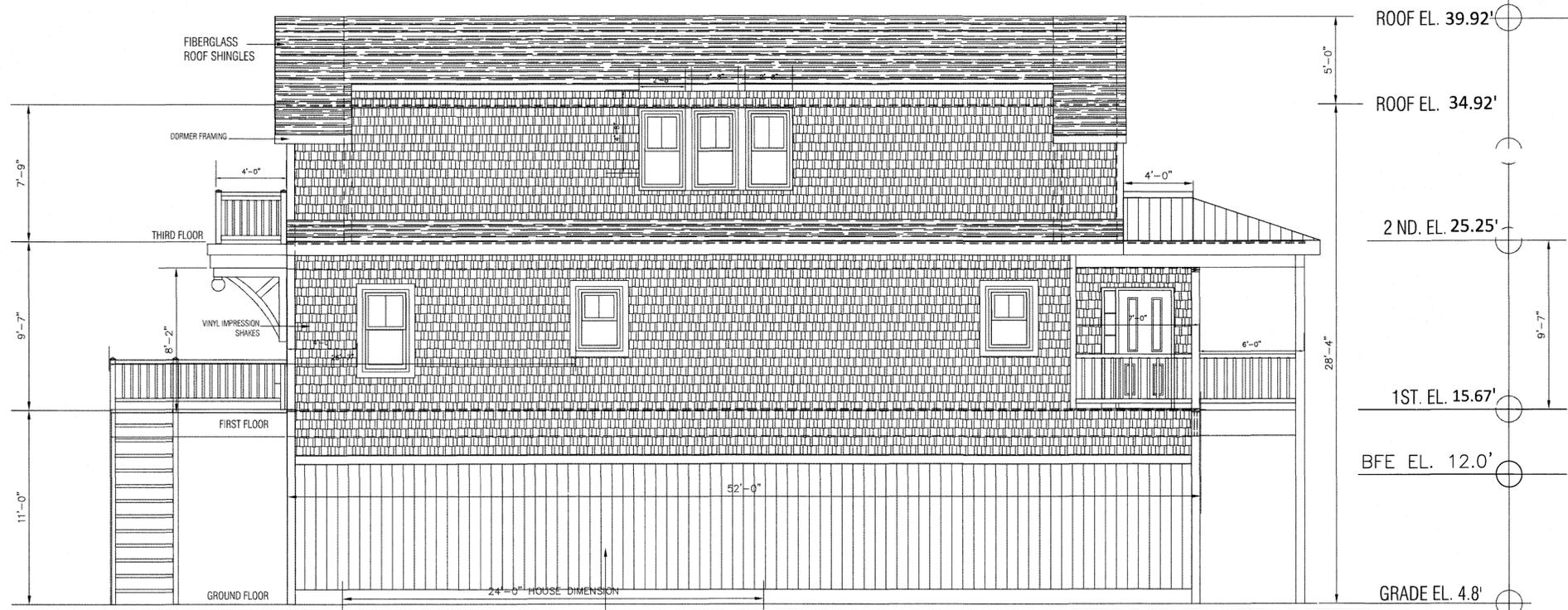
DISTRICT DIMENSIONAL REGULATIONS

District: HDR-10 (Flood Hazard)	Required	Proposed	Variance Requested
Use: Residential	10,000 SF	7,500 SF	
Min. Lot Size	80 feet	50 feet	
Min. Lot Frontage	25.0%	21.0%	
Max. % Imperv. Surf.	25 feet *	24.9 feet *	
Max. Hgt. Prin. Bldg.	20 feet	N/A	
Min. Front Yard Depth	30 feet	30.0 feet	
Min. Cor. Side Yard Depth	22.5 feet	N/A	
Min. Side Yard Depth (N)	15 feet	13.0 feet	2.0 feet
Min. Side Yard Depth (S)	15 feet	13.0 feet	2.0 feet
Min. Rear Yard Depth	30 feet	47.7 feet	
Min. Access. Bldg Side	10 feet	N/A	
Min. Access. Bldg Rear	20 feet	N/A	

*260-20A
 FOR ANY PROPERTY LOCATED IN A FLOOD HAZARD OVERLAY DISTRICT, MAXIMUM SHALL BE MEASURED FROM THE BASE FLOOD ELEVATION (BFE) WHERE THE STRUCTURE IS LOCATED, AS SHOWN ON THE OFFICIAL FEMA FLOOD INSURANCE RATE MAPS FIRMS). ADDITIONALLY, FOR ANY PROPERTY LOCATED IN A FLOOD HAZARD OVERLAY DISTRICT WITHIN THE HDR-10 (HIGH DENSITY RESIDENTIAL), SC-G (SHORE COMMERCIAL-GENERAL), OR SC-WH (SHORE COMMERCIAL-WATCH HILL) ZONING DISTRICT, MAXIMUM MAY BE MEASURED FROM UP TO THREE FEET ABOVE THE BFE WHEN AN ADDITIONAL AND PROPORTIONAL AMOUNT OF FREEBOARD IS BEING UTILIZED. IN NO CASE SHALL ANY DESIGNATED FREEBOARD OR ANY AREA BENEATH THE BFE IN A FLOOD ZONE BE USED AS HABITABLE SPACE.



GENERAL NOTES:
 1. ARCHITECTURAL PLAN PROVIDED BY:
 PETER W. ARGIOS
 ARCHITECT A.I.A.
 244 UPTON ROAD
 COLCHESTER, CT 06415
 RESIDENCE OF MR. & MRS. MICHAEL KANE
 15 CRANDALL AVENUE, WESTERLY, R.I.
 PLAT 165 LOT 3
 SHEET A3
 DATED: APRIL 21, 2017



PLAN REVISIONS				
REV. NO.	DATE	DESCRIPTION	DWN BY	CHK BY

SCALE: 1/4" = 1'
 CA JOB # 213012
 MAY 24, 2017
 DRAWN BY: GAB
 CHECK BY: SFC

ISSUED FOR PERMITTING

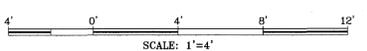
KANE RESIDENCE

BUILDING HEIGHT PLAN
 15 CRANDALL AVENUE
 PLAT 165 LOT 3
 WESTERLY, RHODE ISLAND

PREPARED FOR
MICHAEL KANE



C-2
 SHEET 2 OF 2
CHERENZIA & ASSOCIATES, LTD.



LIST OF PROPERTY OWNERS WITHIN 200' OF PROPERTY OWNED BY
Michael C. and Lisa A. Kane
15 Crandall Avenue
Westerly, RI
Map 165 Lot 3

5-22-17 MB

<i>MAP</i>	<i>LOT</i>	<i>OWNER</i>	<i>MAILING ADDRESS</i>	<i>STREET ADDRESS</i>
164	282	IASSOGNA LINDA A	42 BROOKWOOD DR NEWTOWN, CT 06470	23 CRANDALL AVE WESTERLY, RI 02891
165	008	TAYLOR DAWN M & TAYLOR DANA A	702 JOHNS LANDING RD OAKLAND, FL 34787	10 BENSON AVE WESTERLY, RI
164	283	BABCHAK JAMES & LAZAR FERN	16 WITHINGTON RD SCARSDALE, NY 10583	21 CRANDALL AVE WESTERLY, RI 02891
165	006	NOVAK RICHARD & NOVAK MARYANNE	9 CRANDALL AVE WESTERLY, RI 02891	9 CRANDALL AVE WESTERLY, RI 02891
165	007	LICITRA JOSEPH A JR ET AL	112 SPRING ST GLASTONBURY, CT 06033	3 VIOLET LN WESTERLY, RI 02891
165	010	BERTI ANNE G	2572 TORRINGFORD ST TORRINGTON, CT 06790	14 BENSON AVE WESTERLY, RI
165	011	ENPAVTALI PROPERTIES LLC	C/O MICHAEL P LYNCH ESQ WESTERLY, RI 02891	18 BENSON AVE WESTERLY, RI
165	011B	CASTELLI FAMILY TRUST	3 FIRST ST WESTERLY, RI 02891	3 FIRST ST WESTERLY, RI 02891
165	021	KREEL JOHN S & HUDSON MARSHA F	122 NORTH ST GRAFTON, MA 01519	13 BENSON AVE WESTERLY, RI
165	001	KERNICKI DEBORAH A	61 ABBEY MEMORIAL DR APT 147 CHICOPEE, MA 01020	19 CRANDALL AVE WESTERLY, RI 02891
165	019	KIERTZ ALLEN ET AL	834 S CURTIS ST MERIDEN, CT 06450	19 BENSON AVE WESTERLY, RI
175	089	TUNSKY JOHN P ET AL	1055 NEWGATE RD W. SUFFIELD, CT 06093	6 CRANDALL AVE WESTERLY, RI 02891
165	004	KIMAN PETER H	15 HAYFIELD DR SHELTON, CT 06484	13 CRANDALL AVE WESTERLY, RI 02891
165	020	CRELAN ARTHUR J & CRELAN JANICE A	15 BENSON AVE WESTERLY, RI	15 BENSON AVE WESTERLY, RI
176	002	CANINO CAROL L	24 WOODSIDE CIR HARTFORD, CT 06105	5 CRANDALL AVE WESTERLY, RI 02891

164	185	STERLING RESORT GROUP LLC	8 CRANDALL AVE WESTERLY, RI 02891	8 CRANDALL AVE WESTERLY, RI 02891
164	186	LINCOLN BETH ANN	96 LAWRENCE LN BRISTOL, CT 06010	16 CRANDALL AVE WESTERLY, RI 02891
165	003	KANE MICHAEL C & KANE LISA A	12 SOMERSET LN OLD LYME, CT 06371	15 CRANDALL AVE WESTERLY, RI 02891
165	011A	MAYNARD GEORGE P JR TRUSTEE	16 BENSON AVE WESTERLY, RI	16 BENSON AVE WESTERLY, RI
176	003	MARTIN PAUL M	315 ARLINGTON AVE UNIT 701 CHARLOTTE, NC 28203	5 VIOLET LN WESTERLY, RI 02891
164	286	SUSAN FAUST ET AL	C/O JOAN FITZSIMMONS BERLIN, CT 06037	6 FIRST ST WESTERLY, RI 02891
165	005	MCALOON DANIEL & MCALOON MICHELLE	11 FAMERY LN SANDY HOOK, CT 06482	11 CRANDALL AVE WESTERLY, RI 02891
164	284	CALLAGHAN HAROLD W JR	178 SHEEDY RD VESTAL, NY 13850	2 FIRST ST WESTERLY, RI 02891
164	285	ELTERICH RAYMOND & REYES SANDRA	49 TRAM DR OXFORD, CT 06478	4 FIRST ST WESTERLY, RI 02891
165	018	ANTHONY PHILIP E JR ET AL	PO BOX 311 JEWETT CITY, CT 06351	21 BENSON AVE WESTERLY, RI
164	187	LAVIOLETTE MARY D ET AL	8 KEEN ST WORCESTER, MA 01602	20 CRANDALL AVE WESTERLY, RI 02891
164	188	WELLER RICHARD G & WELLER MICHELE L	40 HILLCREST DR STAFFORD SPRINGS, CT 06076	22 CRANDALL AVE WESTERLY, RI 02891
164	249	DIPERRIO ANNA M	8 FIRST ST WESTERLY, RI 02891	8 FIRST ST WESTERLY, RI 02891
165	002	KERNICKI DEBORAH A & GARDNER FAM IRREV TRUST	247 WORCESTER ST W. BOYLSTON, MA 01583	17 CRANDALL AVE WESTERLY, RI 02891

Town of Westerly

Geographic Information System (GIS)



Date Printed: 5/30/2017



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DEPARTMENT OF PLANNING
AND CODE ENFORCEMENT

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Westerly, RI 02891

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BOOK 2017 PAGE 1312
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ZONING BOARD OF REVIEW
DECISION

January 19, 2017

Michael Kane
12 Somerset Lane
Old Lyme, CT 06371

RE: 15 CRANDALL AVE
Assessor's Plat-Lot '165-003'
Zoning Submittal No. 16/2112

On **January 4, 2017** the Zoning Application for the above-referenced property was presented before the Zoning Board of Review requesting a **Front-yard Setback Variance, Left Side-yard Setback Variance**, and a **Right Side-yard Setback Variance** from §260-19 (Minimum Dimensional Requirements) of the Zoning Ordinance to **construct a 26' x 50' 3-bedroom single-family dwelling with front and rear decks** at the above-referenced property. The subject property is presently vacant and is located in a **HDR-10 (SFR in Flood Zone)** Zoning District.

The Public Hearing on this matter was held on **January 4, 2017** with a decision being rendered at that time. Zoning Board members Linda Bongiolatti, Larry Cioppa (Alt.), Albert Clemence, Mark Doescher, John Ornberg (Alt.), Robert Rose, and Walter Pawelkiewicz were present and heard testimony during the entirety of the Public Hearing.

FINDINGS OF FACT

On October 5, 2016 an initial public hearing on this application was postponed by Attorney Charles Soleveitzik due to an error in public notice. At the November 2, 2016 meeting Attorney Mark Berardo submitted a letter dated October 26, 2016 requesting a further continuance until January 4, 2017 *"to enable the applicants to complete modifications to their plan and reduce the amount of relief being sought in order to satisfy certain concerns articulated by neighboring property owners."* The Zoning Board granted this continuance subject to re-advertising of public notice.

On December 7, 2016, an amended zoning application was received by the Zoning Office which included a site plan and architectural drawings dated November 18, 2016. The applicant reduced their north side variance, slightly increased the south side variance and reduced their frontage variance from their initial proposal and also subsequently eliminated the need for a height variance.

The Zoning Board was provided with a Zoning Narrative from Staff dated September 28, 2016 (updated thru December 14, 2016) which outlined the details of the application and was made part of the record.

The following individuals spoke as representatives of the applicant:

The homeowner, Michael Kane (owner of the property since 2013) was represented by Attorney Charles Soleveitzik. Experts Sergio Cherenzia (a Professional Engineer) and Mr. Joseph Lombardo (an expert in planning) spoke on behalf of the applicant.

Three (3) exhibits were introduced into the record

- 1. Site Plan**
- 2. Architectural Drawings**
- 3. Planning Brief by Joseph Lombardo which detailed the relationship of the property as to how it relates to the Comprehensive Plan and the surrounding neighborhood.**

The property at 15 Crandall Avenue is a vacant lot. The Site Survey, presented by Mr. Sergio Cherenzia, indicated that the Department of Environmental Management approved a septic system which accounted for a raised area on one section of the lot. There is a stormwater feature for run-off water. The lot is 7,500 square feet in area, a substandard lot within the Zoning District.

The lot is narrow which presents a number of challenges. The structure area covering is less than 25% that would be limiting for impervious surface, it was in fact indicated to be 21%. There were variances as previously mentioned for the front and both sides, the front-yard setback was indicated to be required for a set of stairs for deck access.

The property is in a flood zone and the structure is in compliance with the Zoning height requirements dictated by the flood control requirements specified. Information was presented by a GIS survey showing other residential structures in the neighborhood. Neighbors to the north expressed concerns for drainage.

The applicant's Planner, Joseph Lombardo, addressed the variances and the five (5) criteria that the Zoning Board must review in order to approve these variances.

- 1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant. He provided a large amount of information in his expert testimony wherein he concluded that the hardship was not the result of the applicant's action. Mr. Lombardo asserted that this was supported by the unique characteristic of the land itself.**
- 2. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. The applicant and experts testified that the dwelling was not designed to be 'flipped' or to be used in a way to achieve monetary gain.**
- 3. That the dwelling will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan. Upon assessment from personal observation it will not alter the plan because that it seems to be compliant with structures that are in place at the present time.**

4. It is justified in being the least relief necessary. That is because that the least relief necessary is the relief that allows the individual to have the full enjoyment of their property based upon their ownership.
5. The alleged hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. Upon personal review of the precedence set by 'Viti' indicates that while it may be considered an owner's consideration for size of the dwelling may be considered subjective, it is within their right to have a dwelling that suits their use. That can be identified with reference to that aspect of the regulation.

The following people spoke against the application during the Public Hearing:

Debbie Kernicki (17 & 19 Crandall Avenue) who read a letter from a neighbor, Jim Babcock, who referenced his objection that lax enforcement of zoning ordinances could degrade the environment to such that he would not enjoy living there. Mrs. Kernicki's concerns were flooding and that this area has high-water table and frequently floods, as well as the proximity of another dwelling which would reduce the amount of privacy that she has.

Peter Kiman spoke of additional flooding concerns.

Mike Iassogna (23 Crandall Avenue) spoke of houses being too close and if the stairway could be incorporated into the deck so as not to extend beyond the deck.

In response to these concerns by the neighbors, Mr. Cherenzia came forward with comments on flooding and drainage and tried to address the neighbors' concerns.

Based on this information, along with the exhibits, in rendering a decision on this petition, Mr. Albert Clemence made a motion to adopt the above listed Findings of Fact and to approve the applicant's request for a 4' front-yard setback variance, a 7.2' left side-yard setback variance, and a 3.4' right side-yard setback variance from Section 260-19 (Minimum Dimensional Requirements) of the Zoning Ordinance to construct a **26' x 50' 3-bedroom single-family dwelling with front and rear decks** at the above-referenced property as requested, with the following condition added:

1. That the engineering work that has already been accomplished be reviewed and coordinated with neighbors to make sure to the greatest extent that the objections of the neighbors on ponding or flooding are alleviated to the best of the ability of the technical skills available at this time.

Said motion was duly seconded by Mr. Walter Pawelkiewicz and discussion amongst Board members commenced as follows:

Mr. Robert Rose: Disagrees that all of the standards were met as everything in this case is largely interpretive and subjective, does not believe the points made were objective in nature. *The hardship that the applicant seeks is due to the unique characteristics of the subject land* - He does not think there is anything unique about this lot, it's a small lot, they knew it was a small lot when they bought it. That's not a hardship in his opinion. *That the hardship is not the result of any prior action of the applicant* - He believed the action here is that they bought a small lot and that they have to build a small house. He does not think they did anything to the lot and he does not think there is a motive for financial gain. He agrees that the granting to the request does not alter the characteristics

of the neighborhood but does not believe they need any relief here and that they should just build a smaller house. *That the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted will amount to more than a mere inconvenience* – He believes that if you buy a small lot, you build a small house, it's a choice not an inconvenience, he does not think anything changed here.

Mrs. Linda Bongiolatti: Also has difficulty, not necessarily with Standards 1, 2, or 3, but is concerned with Standard 4 and 5. She feels it is a small lot and that they can build a smaller home or something that fits within the zoning regulations. She also believes that it's not a mere inconvenience to build within the confines of what the lot size is. She remains unwavering on the fact that what is presented is representative of the least variance necessary.

Mr. Albert Clemence: To Robert Roses' point, he believes they are up to the point where Viti applies, which is a relaxed standard. He wouldn't want the Zoning Board to put its subjective opinion in place of the rules that are in the regulations. He feels there is a relaxed standard that gives the Board the opportunity for the individual to be the determinant of how they use the property that they own within the specifications. He stated that the regulations say the Board cannot deny the opportunity of someone to use their property and that the Board should not put their own judgement into the quality of the home that the applicant must have for their family, that is not the job of the Board, the job of the Board is to look at the regulation and see what it offers the applicant as to relief.

Mr. John Ornberg: He does not think the Board is taking a position about the color of the walls or the size of the bedrooms. He feels that the small lot was bought knowing full well what the zoning regulations call for and that the applicant was given advice that he could present a variance and build what he wanted. He believes that the applicant went into this to have something large designed and apply for the variance. Overall size of the building was shown in view of the rest of the neighboring properties and that more consideration could have been given by the applicant when he bought it to potentially downsize and still need variances in an effort to achieve the least amount of variance. Mr. Ornberg referenced the *RI Zoning for Non-lawyers* handbook and the topic of least relief necessary on page 24 states *Although a lot may be so small as to require some relief from setback requirements the land owner is not therefore entitled to build all the way to the edge of the property, rather he or she can invade the setbacks only to the extent necessary to make reasonable use of the property...ignorance of the law is no excuse, it does not help a landowner obtain a variance, it does not constitute a self-created hardship that prohibits the granting of a variance* and to him the self-created hardship is the size of this designed of the structure on this small lot.

Solicitor Payne clarified that Mr. Clemence was correct in citing the standards to be weighed against the application but that Viti was not the only one that applies.

Mr. Larry Cioppa indicated that he does not think they are making a judgement as to how they can enjoy their property but that it does not meet the other standards that need to be addressed.

Following discussion, Mr. Jason Parker, Staff Administrative Officer, made a recommendation that the condition associated with the motion should be refrained from or modified because there is no measurable outcome that can come of that and it's fairly subjective. Arguably with two parties that don't agree and won't agree, that condition could never be satisfied. Mr. Albert Clemence made a motion to amend the previous motion to withdraw the condition, which was

Zoning Decision
January 19, 2017

Kane
15 CRANDALL AVE

duly seconded by Mr. Walter Pawelkiewicz and passed unanimously (L. Bongiolatti; A. Clemence; M. Doescher; W. Pawelkiewicz; R. Rose).

RELIEF REQUESTED

§260-19 (Minimum Dimensional Requirements)

- 4.0' Front-yard Setback Variance
- 7.2' Left Side-yard Setback Variance
- 3.5' Right Side-yard Setback Variance

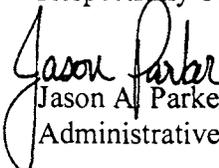
DECISION

Upon a poll vote, the motion to grant the requested **4' Front-yard Setback, 7.2' Left Side-yard Setback, and 3.5' Right Side-yard Setback Variances** from §260-19: Minimum Dimensional Requirements of the Zoning Ordinance to **construct a 26' x 50' 3-bedroom single-family dwelling with front and rear decks** was voted on as follows:

- Mr. Rose: **Nay** - Against voting in favor of the motion to grant the requested variances.
- Mr. Pawelkiewicz: **Yea** - Supports the motion that the applicant has satisfied the Standards listed in Section 260-33 (Variances).
- Mr. Doescher: **Yea** - Supports the motion for the same reasons that W. Pawelkiewicz stated, the applicant provided supporting evidence to meet the criteria of Section 260-33 (Variances).
- Mrs. Bongiolatti: **Nay** - Against supporting the motion because it does not justify Standard Number 4, the least amount of relief necessary.
- Mr. Clemence: **Yea** - Supports the motion as indicated that the arguments were made to satisfy all of the requirements necessary.

The motion to grant the requested relief failed 3-2 ([Yea - A. Clemence; M. Doescher; W. Pawelkiewicz;], [Nay - L. Bongiolatti; R. Rose]).

Respectfully Submitted,


Jason A. Parker, AICP, CFM
Administrative Officer

DONNA L. GIORDANO MMC TOWN CLERK
WESTERLY, RI RET: Zoning Dept