

**TOWNSHIP OF WILLINGBORO ZONING BOARD
RESOLUTION #ZB-2024-7
SHAUN BOIVERT**

(X) "C" Variance	Application # <u>2023-2</u>
(X) Waiver	Applicant: <u>Shaun Boivert</u>
(X) Approved	Owner: <u>Shaun Boivert</u>
(X) General Conditions\Additional Conditions	Property: <u>249 Club House Drive</u> Block: <u>421</u> Lot: <u>16</u> Zone: <u>R-3</u> Action: <u>March 6, 2024</u> Memorialized: <u>April 3, 2024</u>

WHEREAS, the Applicant has applied to the Township of Willingboro Zoning Board ("Board") for the following approval(s): Bulk variance approval from Section 370-7, Article IX, to construct an approximate 14 foot by 24 foot deck along the bulkhead in the rear of the property where the minimum rear yard setback for detached accessory buildings is 4 feet, whereas 0 feet is proposed, and a waiver of submission of a full site plan.

WHEREAS, the application was considered by the Board on March 6, 2024; and

WHEREAS, a public hearing was required and the Board has considered that public comments were not made by the public; and

WHEREAS, it appears that all jurisdictional and procedural requirements of applicable Township Ordinances have been met; and

WHEREAS, the Board has considered the application and the evidence and arguments submitted by the Applicant in support thereof; and

WHEREAS, the Board has considered the recommendations and testimony of its professional staff and the following reports:

- Review letter of November 29, 2023 by Zoning Board Engineer, Bennett Matlack, PE, CME, CFM, of CME Associates (hereinafter CME), attached hereto as Exhibit A and incorporated herein by reference

WHEREAS, requirements necessary to approve the application have been met; and

WHEREAS, the Board has made the following findings of fact and conclusions of law (see attached);

NOW, THEREFORE, BE IT RESOLVED that the relief and approvals requested are hereby granted as follows:

- Bulk variance approval from Section 370-7, Article IX, to construct an approximate 14 foot by 24 foot deck along the bulkhead in the rear of the property where the minimum rear yard setback for detached accessory buildings is 4 feet, whereas 0 feet is proposed.

BE IT FURTHER RESOLVED that the **WAIVER** requested is hereby granted as follows:

- Waiver of site plan.

BE IT FURTHER RESOLVED that the approval(s) hereby granted are made subject to the following **GENERAL CONDITIONS** applicable to this type of application (see attached); and

BE IT FURTHER RESOLVED that the approvals hereby granted are made subject to the following **ADDITIONAL CONDITIONS OF APPROVAL**, and as further detailed herein, at the time of the hearings, in the professional review letters identified and attached hereto as exhibits, and identified as follows:

1. Applicant agrees to all comments, requests and recommendations as listed in the CME review letter dated November 29, 2023.
2. Applicant agrees to secure all outside approvals, including the approvals of the New Jersey Department of Environmental Protection and the Willingboro Municipal Utilities Authority for placement of the deck in the proposed location.
3. Applicant agrees that the proposed installation of the deck will not cause any adverse drainage conditions to any adjoining properties.
4. Applicant agrees that with regard to the installation of the proposed deck, there will be no trespassing on any neighboring properties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant, Shaun Boivert (hereinafter, "Applicant"), has applied for a bulk variance to construct an approximate 14 foot by 24 foot deck along the bulkhead in the rear of the property for the site located within the R-3 Zoning District, with an address of 249 Club House Drive, Willingboro, New Jersey and as more fully particularly described as Block 421, Lot 16 on the Township of Willingboro Tax Map (hereinafter referred to as the "P.I.Q.").

2. The P.I.Q. contains 15,949 s.f. within an R-3 Zone District and provides 100 feet of road frontage along Club House Drive. The P.I.Q. currently contains a two-story dwelling with an inground pool, concrete patio, asphalt driveway extending from Club House Drive, and an 8 foot wooden bulkhead in the rear of the property. The P.I.Q. is encumbered by a sanitary sewer easement approximately 27 feet wide along the rear property line. The P.I.Q. is partially located within the Special Flood Hazard Zone AE-10 in the rear of the property.

3. Counsel for the Applicant, Paul H. Schultz, Esquire, introduced the application to the Board and described the nature of the relief being sought as detailed herein and in the application materials. He noted agreement to the comments and recommendations of CME as detailed in is attached letter.

4. The Applicant marked the following exhibits:

A-1 - Site plan.

A-2 - Survey.

A-3 - Intentionally left blank.

A-4 - Photo 1 of the deck at 245 Club House Drive.

A-5 - Photo 2 of the deck at 245 Club House Drive, different view.

5. The Applicant's first witness was Shaun Boivert, who was sworn. He confirmed the representations made by counsel for the Applicant in the introduction and agreed as a condition of approval to securing the necessary NJDEP approval and the approval from the Willingboro MUA. In an exchange with counsel, it was acknowledged that the Applicant has in fact submitted a letter dated July 24, 2023 from the Willingboro MUA granting approval for the installation of the deck in the location proposed, with the understanding that if at any time the MUA needs access to easement now or in the future and the bulkheads and deck in fact impede such access, the Applicant shall relocate "if possible" or remove the bulkhead and deck in its entirety at the Applicant's expense. In addition, and in the event the Applicant sells the property, the Agreement of the MUA may be null and void. A copy of that letter from the MUA is attached hereto as Exhibit B and is incorporated herein by reference.

6. Mr. Boivert again confirmed the Agreement with the MUA. He also confirmed the variance relief being requested. He detailed that off the back of the bulkhead there is an 8' drop to an area of rocks, and then there is another 8' drop to the water. He indicated that he wanted to provide additional safety in the rear of his property with this proposed deck, including safety for

his two children, three and six years old. In addition to the safety concerns, the addition of the deck will also allow his family and friends to have the use and enjoyment of his property and the beauty of the river. In that regard, the Applicant was shown marked Exhibits 4 and 5, the photos of the deck at 245 Club House Drive, showing the deck at that property. He indicated that while not identical, his intent was to attempt to match the nature of the decking as indicated in these photographs, with a similar “look and feel”, for his own property. He also noted that there are other decks consistent with what he is proposing in the neighborhood, and what he is proposing would fit it with the neighborhood. He also agreed that the proposed deck would not cause any site or view impairments to the neighbors.

7. The Applicant’s second witness was Robert Obetz, R.A., Professional Architect. Mr. Obetz was sworn and qualified as a Professional and expert Architect. He testified consistent with the application material and also provided specific testimony with regard to marked Exhibits A-1, the site plan and what is being proposed. He confirmed the deck’s proposed size of 24 feet by 14 feet, he described the different grades at the rear of the P.I.Q. and discussed how the deck would be accessed from the upper grass area, and also how it would be behind the bulkhead, and will allow the Applicant and his family to descend to a lower level of the deck, and then to also access the water. He noted that the deck will provide the Applicant and his family and friends a place to gather and enjoy the vistas and beauty of the river. He indicated that the proposed decking will be pressure treated lumber, with two girders and two footings, and it will be independent of the bulkhead. He noted that guardrails and handrails will be installed pursuant code to prevent any risk of falls. He also discussed the necessary approvals from the DEP.

8. At the time of the hearing, Bennett Matlack, PE, CME, CFM, of CME, the Board’s Engineer, identified his review letter dated November 29, 2023, attached hereto as Exhibit A and incorporated herein by reference, and testified consistent with the contents of his report. He noted that the Applicant provided the requested testimony and provided detail with regard to the necessary NJDEP approval, the necessary Willingboro MUA approval, and also provided testimony concerning railings and the nature of the deck construction.

9. The matter was then opened to the Board for questions.

10. The matter was then opened to the public and there were no questions.

11. Counsel for the Applicant Mr. Schultz, then made closing comments again confirming the variance and waiver being requested as detailed herein, and summarized the testimony of Mr. Boivert as detailed herein, and summarized the testimony of his expert architect as detailed herein, and contended that the Applicant has in fact met his burdens of proof warranting the granting of the variance relief requested. He detailed that the proposed deck will have a look and feel consistent with the neighborhood, it will not impair the view of the river of any neighbors, and that it will not be out of place and that it will an improvement and beautification of the property.

12. Based upon all the foregoing testimony, the application and other documents and the Board’s familiarity with the P.I.Q., the Board finds that in regard to the P.I.Q., the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-2, would be advanced by the requested relief as detailed herein and that the benefits of the approval would substantially outweigh any detriment. Additionally, the Board finds that in regard to the P.I.Q., the positive criteria has been satisfied.

13. The Board further finds that the requested relief as detailed herein can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Township of Willingboro Master Plan and Land Use Ordinances. The negative criteria has also been satisfied.

14. The Board, therefore, concludes that the approvals requested should be and hereby are granted to the P.I.Q. subject to the conditions set forth in this Resolution, at the meeting and as identified in the professional review letters referenced and attached.

The foregoing action was taken by the Board on March 6, 2024 upon the motion to approve of King, seconded by Stephenson with the vote on the motion being as follows:

AYE: Johnson, Nock, Stephenson, King and Finney

NAY:

The foregoing action was memorialized by the Board on April 3, 2024 upon the motion of Johnson, seconded by Stephenson with the vote on the motion being as follows:

AYE: Johnson, Stephenson and King

NAY:

BE IT FURTHER RESOLVED that a certified copy of the memorialized Resolution be sent to Applicant's counsel within ten (10) days of adoption. A brief notice of this decision should be published in the official newspaper of the Township.

CERTIFICATION

The undersigned Secretary of the Willingboro Township Zoning Board hereby certifies that the above is a true copy of Resolution # 2024-7 adopted by the Willingboro Township Zoning Board on April 3, 2024.


LATOYA COOPER-MCBRIDE,
ACTING BOARD SECRETARY

GENERAL CONDITIONS OF APPROVAL

1. Any variance granted permitting the erection or alteration of any structure(s) or a specified use shall expire unless such construction, alteration or use shall have been actually commenced on each and every structure permitted by said variance within six (6) months from the date of the Board's action and is diligently pursued to completion; except, however, the running of this period shall be tolled from the date of filing an appeal from the Board's decision to Township Council, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding (Section 60-20). This Condition shall not apply if preliminary approval has been granted, extended and is still in effect pursuant to N.J.S.A. 40:55D-49 or if final approval has been granted, extended and is still in effect pursuant to N.J.S.A. 40:55D-52.

2. A brief notice of this decision shall be published in the official newspaper of the Township, at the Applicant's expense. The aforementioned notice shall be sent to the official newspaper for publication within ten (10) days of the date of this decision is memorialized (Code Section 60-32). A proof of publication shall be filed with the Administrative Officer of the Board within thirty (30) days of the date the decision is memorialized.

3. The Applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows, or appeal in accordance with Code Section 150-5A(5).

4. These General Conditions of Approval shall be binding upon the Applicant, the owner and any successors and/or assigns of either.

5. The Additional Conditions of Approval, if any, shall be binding upon the Applicant, the owner and any successors and/or assigns of either.

6. The approval(s) granted is/are conditioned upon the Applicant obtaining the following governmental approval(s), if needed:

- Burlington County Planning Board
- Pinelands Commission
- Any other agency having jurisdiction.

7. Prior to the commencement of any construction, the Applicant shall obtain the following governmental approvals and/or permits, if needed:

- Willingboro MUA
- Willingboro Township Construction Code Official
- Burlington County Soil Conservation District
- New Jersey Department of Transportation – if necessary
- Burlington County Engineer Highway Access Permit
- Burlington County Engineer Utility Connection Permit
- Burlington County Board of Health Approvals
- New Jersey Department of Environmental Protection

- () New Jersey Department of Environmental Protection-wetlands delineation, wetlands transition area and/or general permit(s) approval

8. The Applicant shall be responsible for and shall satisfy, in accordance with the Willingboro Township Land Use Ordinance, the following fees and charges:

- () Mandatory Development Fees;
- () Floor area Ratio Fees in the amount of \$(**to be calculated**).

9. Any improvement(s) to be constructed as a result of the Board approving this application shall be constructed and operated in full compliance with the Code of Willingboro Township, the Revised Statutes of the State of New Jersey and any other applicable county and/or Federal law.

10. Unless specifically waived in whole or in part and noted in the Additional Conditions of this approval, if the above application involves the granting of a final major subdivision approval or a final site plan approval or the approval for the issuance of a zoning permit, the Applicant, in order to assure the installation and maintenance of all required improvements required by the preliminary approval or as a condition to the issuance of a zoning permit, shall furnish written performance guarantees and written maintenance guarantees in the form(s) which comply with the provisions of N.J.S.A. 40:55D-53, et seq., and the Willingboro Township Code. The amount of each performance guarantee shall equal 120% of the amount estimated by the Township Engineer as the cost of installing the required improvements. The maintenance guarantee shall equal 15% of the cost of the improvements and shall cover a period of two (2) years after the final acceptance of the improvements.

11. If the above application involves the granting of a final subdivision or final site plan approval, the Chairperson and Secretary of the Board shall not sign the Final Subdivision Plat or Final Site Plan nor shall any zoning permit issue until the Applicant has posted the required performance guarantee and the Applicant has demonstrated that all conditions of the final approval have been satisfied.

12. Applicants seeking site plan or preliminary and/or final subdivision approval shall:

A. Submit five (5) copies of a complete survey of the property (except for streets) to be dedicated, which survey shall be performed and certified by a licensed surveyor.

B. Submit a topographic survey showing contour intervals of two (2) feet at a scale no larger than one (1) inch equaling one hundred (100) feet.

C. Submit five (5) copies of complete (as-built) plan of any improvements, except for streets, on the dedicated property.

D. Submit a deed of conveyance, approved as to form, content and description by the Township Attorney. The said deed shall contain provision for the signature of the Mayor and attestation by the Township Clerk. Where streets are offered for acceptance, a legal description by metes and bounds describing the centerline shall be included.

E. Obtain title insurance naming the Township of Willingboro as the insured party in an amount equal to the fair market value of the dedicated property; this requirement shall not pertain to streets. In the case of drainage easements not shown on or generated after the final plan is filed in the County Clerk's office and property having a fair market value on one thousand dollars (\$1,000.00) or less, a title search indicating marketable title shall be sufficient, provided that said search is certified by a title insurance company authorized to do business in the State of New Jersey.

13. If a minor subdivision approval has been granted, such approval shall lapse unless within 190 days from the date of approval has been granted the Applicant either files a plat in conformity with the approval and the "Map Filing Law" (N.J.S.A. 46:23-9.9, et seq.) or records a deed with the County Clerk which clearly describe the approved minor subdivision and files a copy of the deed with the Township's Engineer and the Township's Tax Assessor. Such deed shall also be signed by the Chairman and Secretary of the Board.

14. If a final approval has been granted, the Applicant shall submit to the Board Engineer for his review a minimum of 8 complete sets of plans which shall incorporate all of the revisions that have been made conditions of this approval.

15. As part of this first application for final approval, the Applicant shall provide a construction schedule as required by the Willingboro Township Ordinances which must be satisfactory to the Board Engineering Consultant.

16. The Applicant shall comply with Title 39 of the New Jersey Statutes.

EXHIBIT "A"



JOHN H. ALLGAIR, PE, PP, LS (1983-2001)
DAVID J. SAMUEL, PE, PP, CME
JOHN J. STEFANI, PE, LS, PP, CME
JAY B. CORNELL, PE, PP, CME
MICHAEL J. McCLELLAND, PE, PP, CME
GREGORY R. VALES, PE, PP, CME

BRUCE M. KOCH, PE, PP, CME
LOUIS J. PLOSKONKA, PE, CME
TREVOR J. TAYLOR, PE, PP, CME
BEHRAM TURAN, PE, LSRP
LAURA J. NEUMANN, PE, PP
DOUGLAS ROHMEYER, PE, CFM, CME
ROBERT J. RUSSO, PE, PP, CME
JOHN J. HESS, PE, PP, CME
KEITH CHIARAVALLLO, PE, CME

November 29, 2023

Willingboro Township Zoning Board of Adjustment
Municipal Complex
One Salem Road
Willingboro, New Jersey 08046

Attn: Amanda Starling, Zoning Board Secretary

Re: *Bolvert, Shaun*
Bulk Variance – Review #1
Block 421, Lot 16
Location: 249 Club House Drive
Zone: R-3 (Residential District)
Our File: HWLZ0421.01

Dear Board Members:

Our office has reviewed the following information in support of the above-referenced application for Bulk Variance:

- Plan entitled "Deck Addition, Bolvert Residence, Shaun Bolvert, 249 Club House Drive, Willingboro, NJ" consisting of one (1) sheet prepared by Richard W. Obetz, RA dated March 31, 2023;
- Survey entitled "Plan of Survey, Lot 16 Block 421, Township of Willingboro, Burlington County, New Jersey" consisting of one (1) sheet prepared by Cleo E. McCall, PLS of Apex Surveys dated March 24, 2023;
- Submission Letter prepared by Paul H. Scultz of Leonard Sciolla, dated October 19, 2023;
- Zoning Board Application dated October 5, 2023.

Based upon our review of the above information and the Township of Willingboro Ordinance, please find our comments below for your consideration:

1. Project Description:

The subject property is indicated to contain 15,949 s.f. within an R-3 Zone District and provides 100 feet of road frontage along Club House Drive. The property currently contains a two-story dwelling with an inground pool, concrete patio, asphalt driveway extending from Club House Drive, and an 8-foot wooden bulkhead in the rear of the property. The property is encumbered by a sanitary sewer easement approximately 27 feet wide along the rear

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CONSULTING AND MUNICIPAL ENGINEERS
NJ CERTIFICATE OF AUTHORIZATION NO. 24GA2835900
1460 ROUTE 9 SOUTH • HOWELL, NEW JERSEY 07731 • (732) 482-7400 • FAX: (732) 408-0756



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property line. As depicted on the FEMA Flood Map, the property is partially located within the Special Flood Hazard Zone AE-10 in the rear of the property.

The Applicant is seeking Bulk Variance approval to construct an approximate 14 foot by 24 foot deck along the bulkhead in the rear of the property.

2. Surrounding Uses

Properties surrounding the subject property are similarly zoned R-3 and contain single-family dwellings.

3. Zoning Compliance

The subject property is situated within an R-3 Zone District. The table below summarizes the zone requirements and bulk measures for the property as a single family dwelling:

Description	Required	Proposed
Minimum Lot Area	15,000 s.f.	15,936 s.f.
Minimum Lot Frontage	125 feet	100 feet
Minimum Setbacks		
Front Yard	25 feet	30.8 feet
Side Yard	6 feet	9.7 feet
Both Side Yards	13 feet	28.7 feet
Rear Yard	20 feet	70 feet
Minimum Setbacks (Accessory Building):		
Side Yard	4	
Rear Yard	4	0 feet (V)
Maximum Building Height	35 feet / 2 ½ stories	23.6 feet / 2 stories
Maximum Lot Coverage	35%	15.8 %
Minimum Floor Area	600 s.f. ground floor / 1,000 s.f. total floor area	N/A

(V) = Variance Required

A variance appears necessary for the following with this application:



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- a. **Section 370-7 Article IX** – The minimum Rear Yard Setback for Detached Accessory Buildings is 4 feet, whereas 0 feet is proposed.
4. The Applicant has requested various waivers from the Site Plan checklist requirements in conjunction with this application and has provided sufficient information in support of the application.

The Applicant has provided sufficient information and accordingly we recommend that the Application be deemed **complete** at this time. Based upon our review of the subject application, we estimate that the following fees are required in accordance with Ordinance Section 150-5:

5.

a. **Nonrefundable Application Fees:**

Bulk Variance	\$100.00
Subtotal:	\$100.00

b. **Professional Services Escrow Fees:**

Bulk/Hardship Variance	\$500.00
Subtotal:	\$500.00

5. The Applicant should be prepared to discuss the following issues with the Board:
 - a. Reasons supporting the granting of required variances and/or design waivers.
 - b. Any permits/approvals required by outside agencies. The status of all outside agency approvals should be discussed with the Board and copies of all such approvals shall be forwarded to this office.
 - c. Whether a railing or fence will be included on the deck should be discussed, including the size and type.
 - d. The applicant should discuss the existing sanitary sewer easement at the rear of the site. The proposed deck is located within the easement and may be subject to removal if the Township or MUA requires access to the easement area.

The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board.



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If you have any questions with regard to the above matter, please do not hesitate to call.

Very truly yours,

CME Associates

Bennett Mallick, PE, CME, CFM
Zoning Board of Adjustment Engineer

BAM/JM

cc: Ted Evans – Zoning Official (tevans@willingboronj.gov)
Zeller & Weillczko, LLP – Zoning Board Solicitor (mweillczko@zwattorneys.com)
Paul H. Schultz, Esq. – Applicants Attorney (pschultz@leonardsciolla.com)
Richard W. Obetz, RA – Applicants Architect (Richard.obetz@comcast.net)
Cleo E. McCall, PLS – Applicants Surveyor (apexoffice@comcast.net)

EXHIBIT "B"

Willingboro Municipal Utilities Authority

433 JOHN F. KENNEDY WAY
WILLINGBORO, NEW JERSEY 08046-2119
Telephone (609) 877-2900
Fax (609) 835-4645

Richard Linke
Superintendent
Pollution Control Department
Willingboro Municipal Utilities Authority

July 24th, 2023

249 Club House Dr
Willingboro, New Jersey 08046

Dear Applicant:


This letter serves as a formal Agreement with the prospective owner (referred to herein as "Applicant") of 249 Club House Dr Willingboro NJ, 08046, Lot 16, Block 421 (referred to herein as "Property"), regarding the bulkheads & deck encroaching upon the Willingboro Municipal Utilities Authority's (WMUA or Authority) sewer easement. As you are aware, the "Zoning Application" application was denied on April 13th, 2023. However, the Authority is willing to allow bulkheads and deck to remain where it currently lies, based on the Survey dated March 24th, 2023 submitted with the application. As discussed between both parties (WMUA and Applicant), if at any time the Authority needs to access the easement now or in the future and bulkheads & deck in fact impedes said access, the Applicant shall relocate (if possible) or remove the bulkhead & deck in its entirety at the Applicant's expense. In the event the Applicant sells the property, this Agreement may be null and void.

In acknowledgment of this Agreement, please sign as witnessed by a Notary, and return to the Authority in order to process your application. By affixing your signature below, you are agreeing to the terms set forth.

Regards,

Richard Linke

25 July 2023
Today's Date


"Applicant" Signature
Shawn Bowert
"Applicant" Print Name

State of New Jersey
County of Burlington
This record was acknowledged before me on July 28, 2023 (date)
by Shawn Bowert (name(s) of individual(s)).
Signature of notarial officer: Terrence J. Elliott
Stamp

Title of office Notary Public
My commission expires: 03/09/2026

