

RESOLUTION 2021-02

**RED BANK ZONING BOARD OF ADJUSTMENT
IRWIN MARINE
1 MARINE PARK
RED BANK, NEW JERSEY
BLOCK 8, LOT 14
APPLICATION NO.: Z12735**

INTRODUCTION

WHEREAS, representatives of Irwin Marine have made Application to the Red Bank Zoning Board of Adjustment for the property designated as Block 8, Lot 14, commonly known as 1 Marine Park, Red Bank, New Jersey, within the Borough's CCD-2 Zone, for the following approval: Minor Site Plan Approval, Use / "d" Variance Approval (for the expansion of a non-conforming use), and waiver of Site Plan approval to install a fuel storage tank at the site;

PUBLIC HEARINGS

WHEREAS, the Board held Public Hearings on August 6, 2020 and February 18, 2021, Applicant's Representatives having filed proper proof of service and publication in accordance with statutory and ordinance requirements; and

EVIDENCE / EXHIBITS

WHEREAS, at the said Hearings, the Board reviewed, considered, and analyzed the following:

- *Denial of Development Permit, dated October 3, 2019, introduced into Evidence as A-1;*
- *Denial of Development Permit, dated March 23, 2018, introduced into Evidence A-2;*
- *Application for a Development Permit, dated March 19, 2018, introduced into Evidence as A-3;*
- *Intent to proceed, dated January 31, 2020, introduced into Evidence as A-4;*
- *Fuel Tank Location Plan, prepared by Willian F. McHeffey of MC Engineering, dated June 28, 2019, last revised July 1, 2020, consisting of 1 sheet, introduced into Evidence as A-5;*

- *T&M Associates Review Memorandum, dated July 17, 2020, introduced into Evidence as A-6;*
- *NJDEP Permit, dated December 7, 2020, introduced into Evidence as A-7;*
- *Communication from English Gray, LLC, Environmental Consultants, dated December 14, 2020, introduced into Evidence as A-8;*
- *Affidavit of Service; and*
- *Affidavit of Publication;*

WITNESSES

WHEREAS, sworn testimony in support of the application was presented by the following:

- Channing Irwin, representative of the Applicant;
- Casey Boynton, representative of Dover Oil Company;
- Michael Dupont, Esq., appearing;

WHEREAS, Edward W. Herrman, P.E., P.P., C.M.E., C.F.M., the Board Engineer, was also sworn with regard to any testimony / information he would provide in connection with the subject Application; and

TESTIMONY / EVIDENCE PRESENTED

WHEREAS, testimony and other evidence presented on behalf of the Applicant revealed the following:

- The Applicant, or a related entity, is the owner of the subject property.
- There is an existing Marina operating at the site (known as Irwin Marina).
- Upon information and belief, the Irwin Marina is the oldest family-run Marina in the United States of America.
- The Marina has operated at the site for more than 100 years.
- A fuel pump previously existed at the Irwin Marina.
- The previously existed fuel tank at the Irwin Marina was removed in or about 1998.
- Currently, there is no other fuel pump at the site.

- There are no other onsite Marina fuel pumping stations on / adjacent to the Navesink River.
- The Applicant’s representatives propose to install 1 fuel storage tank at the site, for use by the Marina’s Care-free Boat Club – i.e. a sort of timeshare system for boats, whereby members can, for a fee, utilize any of the 7 boats which are associated with the Care-free Club. That is, the proposed fuel tank will only be utilized to fuel the 7 boats in the Applicant’s Care-free Boat Club.
- Details pertaining to the proposal include the following:

Number of fuel tanks proposed:	There is only 1 fuel tank proposed.
Tank surround details:	The fuel storage tank will be surrounded by Bollards.
Location of tank:	The fuel storage tank will be located on land, approximately 100 ft. away from the Navesink River, per the Plans.
Size of fuel storage tank:	2,000 gallon tank
Fueling availability:	The fuel storage tank will only be utilized to fuel the tanks for the 7 boats in the Applicant’s Care-free Timeshare Boat Club – and the same is all which is allowed per the Applicant’s NJDEP Approval.
Retail sale of gasoline to non-Care-free Boat Club Members?:	No, there will be no retail sale of gasoline to non-Care-free Boat Club Members, or to any other members of the boating public.
Service for out of gas / stranded boaters?:	No, as indicated, the fuel is only for the 7 boats in the Applicant’s Care-free Boat Club and, as such, out of gas or otherwise stranded boaters cannot be fueled.
Maximum number of boats associated with the Applicant’s Care-free Boat Club:	7
Current age of boats in the Applicant’s Care-free Boat Club:	Currently, the 7 boats in the Care-free Boat Club are newer boats, including one boat built in 2017, two boats built in 2019, and four boats built in the 2020’s.
Approximate size of boating fuel tanks (for the boats in the Applicant’s Care-free Boat Club):	30-80 gallons (i.e. only single engine boats)
Fuel storage tank details:	The fuel storage tank will contain a double wall (i.e. a tank within a tank).
Hours of operation for the Applicant’s Care-free Boat	Spring and Fall Seasons: Tuesdays – Sundays

Club:	8:00 a.m. – 5:00 p.m. Memorial Day to Labor Day: Tuesdays – Sundays 8:00 a.m. – 8:00 p.m.
Marina operations:	It is anticipated that the Marina will be open 7 days a week (during the boating season) and in accordance with any <u>Prevailing Municipal Regulations</u> .
Fuel delivery frequency:	Fuel will be delivered to the Applicant’s site 1-time per week (during the mid-day).
Fuel delivery vehicle details:	The fuel will be delivered to the Applicant’s site by a small home heating oil truck, which can presumably hold up to 2,500 gallons of fuel. That is, the fuel will <u>not</u> be delivered by an 18-wheel tractor trailer.
Fuel servicing process:	The boats will be fueled in a similar manner as cars are fueled at a gas station. That is, the nozzle for the fuel storage tank will be inserted to the boat tank.
Fuel servicers:	The boats in the Applicant’s Care-free Boat Club will be fueled by individuals who have been appropriately trained (including training received from the US Boating Association).
Nozzle location:	The nozzle for the fuel storage tank will be attached to the fuel storage tank, and the same will always be stored at / on the tank, when not in use.
Fuel storage tank anchoring details:	There will be a concrete pad poured for the tank. The tank will be placed on skiffs, and strapped (via cable) to the concrete pad.
Spill containment plan:	The Applicant has or will have an NJDEP-approved spill containment plan. The spill containment plan shall include details for a floating containment boom, and a back-pressure cut-off valve.
Signage:	There will be no signage associated with the fuel storage tank.

- The Applicant’s representatives anticipate having the fuel storage tank installed in the very near future.
- The fuel storage tank will be installed in accordance with manufacturing / industry / DEP Standards.

VARIANCE

WHEREAS, the Application as presented requires a Variance for the following:

USE / “d” VARIANCE FOR THE EXPANSION OF A NON-CONFORMING USE: The existing Marina at the site is a non-conforming use and, as such, the request to install a fuel storage tank requires Use / “d” Variance approval for the expansion of a non-conforming use.

PUBLIC COMMENTS

WHEREAS, there were no members of the public who expressed any questions, statements, objections, and / or concerns associated with the proposal.

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Red Bank, 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 Board of Adjustment makes the following Findings of Fact and Conclusions of Law:

1. The Red Bank Zoning Board of Adjustment has proper jurisdiction to hear the within matter.
2. The subject property is located at 1 Marine Park, Red Bank, New Jersey within the Borough’s CCD-2 Zone.
3. There is an existing Marina operating at the site – and the existing Marina has operated at the site for over 100 years.
4. The existing Marina is a pre-existing non-conforming use.
5. The Applicant herein proposes to install a fuel storage tank at the site. (The details for the proposed tank are set forth elsewhere herein, were set forth on the submitted Plans, and were discussed during the Public Hearings.)

6. Such a proposal requires Minor Site Plan Approval, Use / “d” Variance Approval for the Expansion of a Non-Conforming Use, and a Waiver of Site Plan Approval.

7. The Red Bank Zoning Board of Adjustment is statutorily authorized to grant the requested relief, and therefore, the matter is properly before the said entity.

8. With regard to the Application, and the requested relief, the Board notes the following:

- The Board is aware that the within Approval will merely allow the Marina to provide 1 onsite fuel storage tank, so as to service the 7 boats associated with the Applicant’s Care-free Boat Club (which is a sort of timeshare arrangement whereby Members can, for a fee, utilize 1 of 7 boats in the Care-free Boat Club fleet, without actually owning a boat).
- The Board is aware that the fuel offered / sold for the site will only be available for the 7 boats which make up the fleet in the Applicant’s Care-free Boat Club. That is, the Board Members are aware that the fuel storage tank approved herein will not be utilized by other non-Care-free Boat Club Members of the Marina, and the same will not be used by the general public.
- The Board is aware that there are no other site improvements associated with the proposal, but for the installation of the tank.
- The Board Members were rightfully concerned about any potentially adverse environmental impact associated with the request to install a fuel storage tank at the site (particularly in that there are no other Marina fuel service stations on or along the Navesink River).
- The Applicant’s representatives testified as to a number of precautions which will be utilized so as to help minimize any adverse environmental impact associated with the proposal. Some of the precautionary details include, but are not limited to, the following:
 - Confirmation that the fuel storage tank will contain a double wall containment system (i.e. a tank within a tank);
 - Confirmation that the fuel storage tank will be located on land, approximately 100 ft. away from the actual Navesink River;
 - Confirmation that the fuel storage tank will be appropriately fastened to a concrete pad, thereby further minimizing the possibility of any problems associated with a severe title surge, etc.;
 - Confirmation that the Applicant will have a DEP-approved spill containment plan;

- Confirmation that only appropriately trained individuals will be actually fueling the 7 boats in the Applicant's Carefree Boat Club; and
- Confirmation that when the nozzle for the fuel storage tank is not in use, the same will be appropriately placed on the tank.

The aforesaid items assuaged the concerns of the Board Members.

- The Board finds that adherence to the aforesaid standards will minimize the opportunity for any adverse environmental impact associated with the proposal.
- The Application was first presented to the Zoning Board at a Public Hearing held on or about August 6, 2020. At that time, the Board Members were apprehensive about approving the Application without assurances that the NJDEP would endorse / approve the project at well. While there was a general discussion about conditionally approving the Application (on the condition that the Applicant secure any and all necessary NJDEP Approvals, post-approval from the Red Bank Zoning Board,) Board Members were not inclined to approve the Application until such time as there was confirmation that the NJDEP did, in fact, approve the proposal. As such, the Public Hearing process was adjourned on several occasions, so that the Applicant could pursue / obtain any necessary NJDEP approvals.
- The Board appreciates the willingness of the Applicant's representatives to consent to the multiple adjournments.
- On or about December 7, 2020, the Applicant's representatives received the NJDEP Permit, allowing / approving the proposed fuel storage tank. (A-8)
- At the February 18, 2021 Zoning Board Meeting, the Applicant's representatives confirmed that the NJDEP approved the project (A-8), and the Applicant's representatives further testified as to the limitations / conditions associated with the aforesaid approval.
- In knowing that the Applicant's representatives received NJDEP approval for the project, the Board Members were quite comfortable in conditionally approving the Application.
- Given the long-time presence of a Marina on the property, given the proximity to the adjacent Boat Yard, given the site's proximity to the Navesink River, and given the nature of the timeshare arrangement associated with the Applicant's Care-free Boat Club, the Board finds that the subject site is particularly suited for the Applicant's proposed fuel storage tank.
- The testimony also indicated that there is a lack of a significant river current in the subject area, which should further minimize any adverse

environmental issues associated with the proposal (and which should further minimize any disruption to the tank fueling process).

- The Board notes that the fuel storage tank is located on land, approximately 100 ft. away from the actual Navesink River, which should further minimize any adverse environmental impact associated with the proposal.
- The Board notes that the Borough's Master Plan does, essentially, promote the use of, and enjoyment of, the Navesink River – and approval of the within Application will advance such a purpose by providing boating / recreational opportunities to individuals who might not otherwise own a boat.
- Access to the beautiful Navesink River is one of the wonderful assets of the Borough of Red Bank – and approval of the within Application will help members of the Applicant's Care-free Boat Club to better utilize / experience / enjoy the waterway.
- The Applicant's Care-free Boat Club (i.e. a timesharing sort of idea for the use of boats) seems like a creative, functional, enjoyable, and successful venture.
- There are no other site improvements associated with the within proposal (except for the installation of the fuel storage tank).
- There are no new drainage facilities associated with the subject proposal.
- Approval of the within Application will not materially change the overall impervious coverage at the site.
- There are no new lighting plans associated with the within proposal.
- Approval of the within Application will not compromise, or otherwise reduce, the overall parking inventory at the site.
- One of the recognized purposes of the New Jersey Municipal Land Use Law is to provide a sufficient space for a number of recreational uses – and, subject to the conditions contained herein, approval of the within Application will, in fact, advance such a purpose.
- Approval of the within Application will not materially intensify the existing Marina use at the site.
- Though the Application technically constitutes the expansion of a non-conforming use, installation of the fuel storage tank will not generate any of the typical by-products associated with other expansions of non-conforming uses. That is, in conjunction with the within approval, there will be no corresponding increase in Marina membership per se, there will be no material increase in the number of overall individuals at the site at any one time, there will be no material increase in the number of overall vehicles at the site, there will be no material increase in the truck / delivery frequency associated with the site, there will be no corresponding

increase in the overall intensity at the site, and there will be no detrimental impact to the surrounding uses.

- The existing property can physically accommodate the fuel storage tank, and the technically expanded use approved herein.
- There are no new Bulk Variances created / triggered / exacerbated in connection with the installation of the fuel storage tank at the site.
- Approval of the within Application will not materially accentuate, or otherwise enhance, the non-conforming nature of the existing Marina use.
- There were no known public objections associated with the within Application.
- Approval of the within Application will not change the size of any existing structures at the site.
- Approval of the within Application will not increase the number of overall “permanent boat slips” associated with the existing Marina.
- Approval of the within Application will not materially change the hours of operation associated with the existing Marina (although the hours for the Applicant’s Care-free Boat Club are less intense than the Marina hours).
- Approval of the within Application will not materially change the number of employees associated with the existing Marina.
- Approval of the within Application will not materially change the number of individuals/patrons/customers otherwise associated with the existing Marina.
- Approval of the within Application will not materially change the overall boating operation at the site.
- Approval of the within Application will not materially change the amount of garbage generated at the site.
- Approval of the within Application will not materially change the nature / extent of noise emanating from the site.
- Approval of the within Application will not generate any offensive noise at the site.
- Approval of the within Application will not materially change the height / location / orientation / footprint of any existing structures on the Marina property.
- Approval of the within Application will not materially change the historic parking demands associated with the existing Marina.
- Approval of the within Application will not materially change the overall historic intensity of the existing Marina use at the site.

- Approval of the within Application will not materially change the amount of employees on the site at any one particular time.
- Approval of the within Application will not materially change the amount of boat traffic associated with the Marina.
- Approval of the within Application will not materially change the vehicular traffic associated with the Marina operation.
- Approval of the within Application will not materially change the overall aesthetic appeal of the property.
- Approval of the within Application will not materially change the existing lighting scheme at the Marina.
- Approval of the within Application will not materially change the nature / extent of deliveries to the site (except for the 1-time per week delivery of fuel).
- Once installed, the fuel storage tank will not be readily visible from the street.
- There will be no signage associated with the fuel storage tank approved herein – particularly in that the same will not be servicing non-Care-free Boat Club Members.
- Given the limited amount of site work associated with the within approval, any requested site plan submission waivers can be granted without causing substantial detriment to the public good.
- Approval of the within Application will not materially change the overall physical appearance of the Marina.
- 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.
- 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.
- Subject to the conditions set forth herein, the Application as presented satisfies the Statutory Requirements of N.J.S.A. 40:55D-70(d).

In light of the above, the Zoning Board unanimously finds that the subject Application and associated relief can be granted without causing substantial detriment to the public good.

CONDITIONS

During the course of the Hearings, the Board has requested, and the Applicant's Representatives have agreed, to comply with the following conditions:

- a. The Applicant's representatives shall comply with all promises, commitments, and representations made at or during the Public Hearing process.
- b. The conditions contained herein shall apply to any successor owner / operator of the Marina.
- c. Unless otherwise specifically waived herein, the Applicant shall comply with the terms and conditions of the Review Memorandum from T&M Associates, dated July 17, 2020 (A-6).
- d. The Applicant shall obtain and maintain any and all necessary outside approvals.
- e. The Board has approved the within Application based upon the specific testimony presented, and the specific findings set forth herein. To the extent operations at the site materially deviate from that which was presented herein, the Applicant shall be required to petition the Zoning Board for further relief.
- f. There shall be no further intensifications / expansion of the Marina use at the site, absent further / formal approval of the Zoning Board of Adjustment.
- g. The Applicant shall comply with the terms and conditions of the NJDEP Permit (A-8).
- h. The testimony presented, and the NJDEP Permit indicate that the fuel is only to be offered to the 7 boats which are involved in the Applicant's Care-free Boat Club (or other named Boat Club, should the name change).
- i. There shall be no retail sale / distribution of fuel at the site (except for the fueling of the 7 boats associated with the Applicant's Care-free Boat Club).
- j. The fuel storage tank shall be place on a concrete pad at the site, and in accordance with the testimony presented.
- k. Unless otherwise waived, the Applicant shall comply with the terms and conditions of any Environmental Commission Memorandum issued in connection with the Application.

- l. The installation of the fuel storage tank at the site shall comply with all Prevailing Building / Construction Code Requirements.
- m. The fuel storage tank approved herein shall be installed and maintained in accordance with Prevailing Manufacturer / Industry / DEP best-practiced Standards.
- n. The Applicant shall contribute to the Borough's Shade Tree Trust Fund, per Prevailing Provisions of the Borough Ordinance, and per the terms and conditions of the T&M Associates Review Memorandum (A-6).
- o. The Applicant shall obtain any and all necessary permits as the Borough of Red Bank (and / or any other Agency having jurisdiction over the matter) may require.
- p. The Applicant shall comply with any and all Affordable Housing rules / obligations / directives, as established by the State of New Jersey, the Borough of Red Bank, C.O.A.H., the Court System, and / or any other Agency having jurisdiction over the matter.
- q. The construction shall be strictly limited to the plans which are referenced herein and which are incorporated herein at length. Additionally, the construction shall comply with prevailing provisions of the Uniform Construction Code.
- r. The Applicant shall comply with all terms and conditions of the review memoranda, if any, issued by the Board Engineer, the Zoning Officer, and other agents of the Borough.
- s. Unless otherwise waived by the Borough's Director of Planning and Zoning, 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, and the Freehold Soil Conservation District.
- t. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate/required fees and taxes.
- u. If required by the Board Engineer, the Applicant shall submit appropriate performance guarantees in favor of the Borough of Red Bank.
- v. Unless otherwise agreed by the Zoning Board, the within approval shall be deemed abandoned, unless, within 24 months from adoption of the within Resolution, the Applicant obtains the necessary permits, for the construction / renovation approved herein.

NOTE: Pursuant to Prevailing Borough Ordinance, the following disclosures are noted:

- a. Board Member Lauren Nicosia recused herself based upon a potential conflict of interest with the Applicant's representatives.

- b. Board Member Christine Irwin recused herself as a result of her ownership / equitable interest in the subject Marina.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicant and / or its agents shall be deemed conditions of the approval granted herein, and any misrepresentations 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 Red Bank, 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 Board of Adjustment of the Borough of Red Bank, the Borough of Red Bank, or their agents/representatives accept any responsibility for the structural design of the proposed improvement or for any damage which may be caused by the development / renovation / installation / construction.

FOR THE APPLICATION: Ray Mass, Eileen Hogan, Richard Angowski, Sean Murphy, Anne Torre, Matt Anderson, & Bruce Maida

AGAINST THE APPLICATION:

ABSTENTIONS:

FOR THE RESOLUTION:

AGAINST THE RESOLUTION:

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Red Bank Zoning Board of Adjustment on this _____ day of _____, 2021.

Maria Graziano, Zoning Board Secretary

KEK/dmp
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