




MEMORANDUM

**Clarke Caton Hintz**

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**To:** Union Township Zoning Board of Adjustment

**From:** Andrea Malcolm, PP, AICP 

**Re:** **Arijanit & Michaela Gjevukaj**  
Bulk Variances  
Block 4, Lot 3.16  
White Oak Drive  
CM – Conservation Management District

**Date:** October 16, 2020

**1.0 PROJECT DESCRIPTION**

The applicant is seeking an impervious coverage variance to permit construction of a single family dwelling on a vacant, undersized lot. A variance for steep slope disturbance is also requested.

The property is 3.124 acres in area and located on the south side of White Oak Drive. The lot was created circa 1993 as part of a major subdivision of a tract located along the Township's northern border with Bethlehem Township. The property slopes down from west to east, with wooded areas retained along the western and southern border. The adjacent properties to the southeast and southwest, and the properties to the northeast and northwest across White Oak Drive, are developed with single-family homes.

**2.0 COMPLETENESS**

The completeness review of the application is deferred to the Board Engineer.

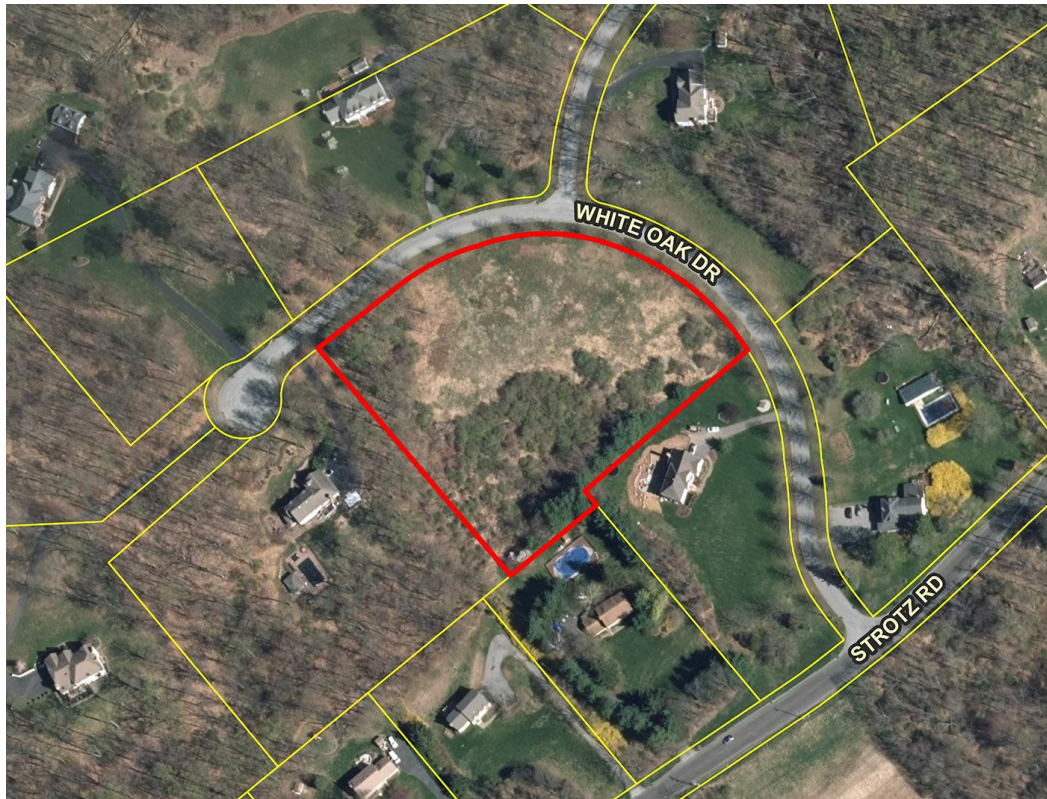
**3.0 HIGHLANDS REGIONAL PLANNING**

1. Highlands Regional Master Plan (RMP). The site is located within the Highlands Preservation Area, and the entire site is within the Protection Zone. This zone consists of consists of high resource value lands that are important to maintaining water quality, water quantity, and sensitive ecological resources and processes.

John Hatch, FAIA  
George Hibbs, AIA  
Brian Slauch, AICP  
Michael Sullivan, AICP  
Michael Hanrahan, AIA  
Mary Beth Lonergan, AICP



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Aerial photograph depicting existing conditions.

N.T.S. 

#### 4.0 ZONING AND ENVIRONMENTAL PERFORMANCE REQUIREMENTS

- I. **Undersized Lot.** The applicant is seeking a variance from the ordinance provisions pertaining to undersized lots pursuant to §30-7.1.c.2:

*Any lot, including contiguous lots, existing at the effective date of adoption or amendment of this chapter, whose area or dimensions met the requirements of the district in which the lot was located prior to adoption of this chapter or amendment of this chapter and which does not meet such requirements of this chapter, may have a building permit issued for a use permitted for that zoning district provided that the building coverage limit is not exceeded, parking requirements are met and the yard and height provisions are reduced by the same percentage that the area of such lot bears to the zoning district requirements except that no side yard shall be less than half that required by this chapter or five feet, whichever is greater.*



The conformance of the proposal with the provisions of §30-7.1.c.2 is evaluated below:

- a. **Prior zoning requirements.** Based on the final plat for the circa 1993 subdivision, the lot area and dimensions are in conformance with the prior CM zoning standards, which required a minimum 3 acre lot area, a minimum 75' front yard and a minimum 50' side yard.
  - b. **Permitted use.** The proposed single-family detached dwelling is a permitted use within the CM zone pursuant to §30-4.2.a.1(c).
  - c. **Building coverage.** Building coverage is included as part of the impervious surface ratio requirement within the CM zone, pursuant to §30-4.2.b. The applicant proposes an impervious surface coverage ratio of 0.07, exceeding the maximum 0.03 impervious surface coverage ratio permitted for a single-family detached dwelling use within the CM zone. **A “c” variance is required. The applicant should indicate what alternative designs have been considered, if any, to reduce the extent of impervious coverage variance.**
  - d. **Parking requirements.** The applicant proposes a 4-bedroom single family detached dwelling, requiring 2.5 parking spaces under RSIS. A 3- car garage is proposed, addressing the required parking.
  - d. **Yard dimensions and building height.** Although §30-7.1.c.2 provides for a reduction in the zoning district requirements pertaining to yard dimensions and building height, the proposed development conforms with the minimum 75' front yard and minimum 50' side yard in the CM zone pursuant to §30-4.2.c. The development plan also indicates that the building will conform maximum 35'/2.5 story height requirement in the CM zone. **Architectural plans should be provided to verify the building height.**
2. **Steep Slopes.** The applicant is proposing disturbance of 934 sf of steep slopes  $\geq 20\%$ , representing 35.56% of all steep slopes  $\geq 20\%$  that are located on the site. **A variance is required from §30-6.4.b.4(a)(3), which permits a maximum 10% disturbance of steep slopes  $\geq 20\%$ . The areas of steep slopes  $\geq 20\%$  appear to be concentrated in the southwest area of the site. The applicant should indicate what alternative designs have been considered, if any, to reduce the extent of the steep slopes disturbance variance.**
  3. **Tree Removal.** The plans depict the proposed septic disposal area partly located within a wooded area of the site. **The applicant should clarify the extent of any proposed removal of trees greater than 12” dbh and proposed tree replacement as required by §30-6.4.b.5(a)(4).**



**5.0 VARIANCE CONSIDERATION**

1. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria; this report identifies the variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the “c” variance.
2. Positive Criteria. The applicant bears the burden of proof (which is divided into two parts – positive criteria and negative criteria) in the justification of the “c” variance. To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:
  - By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
  - By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
  - By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

The applicant should provide testimony regarding any peculiar and exceptional practical difficulties or exceptional and undue hardship if seeking c(1) variance relief for the impervious coverage and steep slope disturbance variances.

Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:

- Where in an application or appeal relating to a specific piece of property the purposes of the Act (N.J.A.C. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

The applicant should provide testimony regarding any public benefits of the project if seeking c(2) variance relief for the impervious coverage and steep slope disturbance variances.



3. Negative Criteria. Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.
  - a. Negative Criteria: Impact to the public good. Impact to the public good, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. The applicant should provide testimony regarding any potential negative impacts to the character of the neighborhood resulting from the proposed variance relief and any proposed mitigation measures to reduce potential negative impacts to the public good.
  - b. Negative Criteria: Impact to the zone plan. In considering the potential negative impacts to the zoning ordinance and zone plan, the Board should consider potential impact of the variances on the zoning purpose of the CM District as described in §30-3.5.b:

*The Conservation Management District consists of districts within Union Township with limited development potential due to steep slopes, wetlands, C-1 Category streams and associated buffers, poor suitability for on-lot sewer systems, high soil erosion potential, and limited groundwater availability. For these reasons development is limited to single-family detached development on large lots (8.3 acres) for scattered-type development. Because these districts consist of mostly environmentally sensitive lands with limited development potential, it is also desirable for open space preservation and environmental protection.*

The Board should consider the extent to which the variances may result in any substantial impairment of the intent and purpose of the CM zoning district as described above, including any potential impacts and proposed mitigation measures related to steep slope disturbance, suitability for the on-lot sewer system, high soil erosion potential, and limited groundwater availability.

#### **6.0 APPLICANT/ OWNER/CONSULTANTS**

1. **Applicant/Owner:** Arijanit & Michaela Gjevukaj, 39 South 10 Street, Easton, PA, 18042. Tel: 347-400-3117.
2. **Attorney:** Kara Kaczynski, Esq., McNally Yaros, Kaczynski & Lime, 275 East Main Street, Somerville, NJ 08887. Tel: 900-800-7010.
3. **Engineer:** Theodore H. Bayer, Bayer-Risse Engineering, Inc., 78 Route 173 West, Suite 6, Hampton, NJ 08827. Tel: 908-735-2255.



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**7.0 MATERIALS REVIEWED**

- Application to Planning Board/Board of Adjustment dated October 1, 2020.
- Land Development Plan, prepared by Theodore H. Bayer, PE, Bayer-Risse Engineering, Inc., 7 sheets, dated October 1, 2020.
- Topographic Survey, prepared by Robert Ent, Jr., PLS, 1 sheet, dated August 2020.
- Final Subdivision Plat for Mountain View Estates, prepared by C. Douglas Cherry, 3 sheets, dated July 15, 1993; Township signatures of approval dated 8/9/93.

I would be pleased to answer any questions regarding this report.

c: Grace Kocher, Board Secretary  
Mark Anderson, Esq.  
Robert Clerico, PE  
Arijanit & Michaela Gjevukaj, applicants  
Kara Kaczynski, Esq.  
Theodore H. Bayer, PE

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