



MEMORANDUM

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**To:** Union Township Zoning Board of Adjustment  
**From:** Emily Goldman, PP, AICP *Emily Goldman*  
**Re:** **Andrew Pecoraro**  
Bulk Variances  
Block 25, Lot 2  
61 Race Street  
CM – Conservation Management District  
**Date:** March 22, 2021

**1.0 PROJECT DESCRIPTION**

The applicant is seeking approval to permit construction of an addition to an existing single-family detached dwelling on an existing, undersized lot. The addition contains a two-car garage and a studio with a balcony and a full bathroom. The applicant is also proposing to expand the rear deck on the existing dwelling.



The applicant requires d(1) variance relief for the proposed home occupancy use since the proposed use does not meet all of the standards of the home occupancy use. The applicant also requires bulk variance relief for front yard setback, side yard setback, and impervious surface ratio.

The property is 2.41 acres, known as 61 Race Street, located in the CM Conservation Management District. The property is currently improved with a two-story frame dwelling, a paved driveway, a stone patio, a fire pit, a brick walk, a stone wall, 6-foot PVC fence, septic system, well, plantings, and riprap associated with Jutland Lake. The property is also encumbered by a portion of Jutland Lake, a NJDEP flood hazard area, a 300-foot riparian zone, a 30-foot

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drainage easement, a variable width dam maintenance and access easement, and a sight triangle easement.

The property is a corner lot bounded by Race Street to the north and Gephardt Farm Road to the west. The adjacent properties to the southeast and the properties to the northeast and northwest across Race Street are developed with single-family homes. The property is bounded by Jutland Lake to the south and woodlands to the east and southeast.

## 2.0 COMPLETENESS

The application was deemed complete at the February 11, 2020 Zoning Board of Adjustment meeting.



## 3.0 ZONING REQUIREMENTS

- I. **Permitted Use.** The property contains an existing single-family detached dwelling. The applicant is proposing to construct an addition to the existing single-family detached dwelling containing a two car garage and a studio with a full bath as well as to expand the rear deck. Pursuant to §30-4.2.a.1(d), a B-1 Single-



family detached residence is a permitted use within the CM District. The applicant has indicated the studio, balcony and full bathroom are for a home occupation use as an artist studio; H-1 Home occupation is a permitted use within the CM District subject to the standards of §30-5.5h(1).

However, the Board should consider that the studio area does not have a direct connection to the existing dwelling area and future landowners may use this space as an apartment. The CM District does permit the following residential accessory apartments:

- H-2 Residential Accessory Structures which includes accessory apartment for domestic servants or caretaker employed on the premises and for occasional gratuitous guests pursuant to the standards at §30-5.5h(2)(f).
- H-11 Accessory Apartment use pursuant to the standards at §30-5.5h(11).

2. **Performance Regulations.** The applicant does not meet any of the performance regulations. See Table 1 for additional details on the applicant’s compliance with the performance regulations.

Table 1: §30-4.2b Performance Regulations for Single-Family Detached Dwellings			
	Standard	Proposed	Complies?
Max. Gross Density (DU/AC) (1)	0.12	0.415	No (2)
<b>Max. Impervious Surface Ratio</b>	<b>0.03</b>	<b>0.04</b>	<b>No</b>
Min. Gross Site Area	8.3 acres	1.54 acres	No (2)
Min. Lot Area	8.3 acres	2.41 acres	No (2)
Notes:			
(1) In order to determine the FAR or density for a given site, multiply the acreage ratio (density or FAR) to determine the site's potential yield. The FAR or density yield also may be affected by other bulk requirements, such as impervious coverage, parking, etc.			
(2) An existing, non-conformance			

3. **Gross Density.** §30.4.2b permits a maximum gross density of 0.12 dwelling units per acre. The existing gross density on the property is 0.415 dwelling units per acre. This is a pre-existing condition.

4. **Impervious Surface Ratio.** The applicant proposes an impervious surface coverage ratio of 0.04, 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.

Pursuant to Ordinance 2020-10, “Development on lots which are less than 8.3 acres and were created prior to November 12, 2020 (existing lots) that results in impervious coverage in excess of the greater of 0.03 or 5,000 square feet shall store the runoff from the excess impervious coverage from the equivalent of 3” of precipitation in a storm water management facility with an outlet not greater than 1.5”. For lots less than 8.3 acres, in no instance is the impervious coverage to exceed 10,846 square feet.” This office defers to the Board Engineer pertaining to the stormwater management of the excess impervious coverage.

5. **Gross Site Area.** §30.4.2b requires a minimum gross site area of 8.3 acres. The applicant is proposing a gross site area of 1.54 acres. This is a pre-existing condition.
6. **Lot Area.** §30.4.2b and §30.4.2c require a minimum lot area of 8.3 acres. The applicant is proposing a lot area of 2.41 acres. This is a pre-existing condition.
7. **Area and Dimensional Requirements.** The applicant does not meet five of the area and dimension requirements; three of which are pre-existing conditions. See Table 2 for additional details on the applicant’s compliance with the area and dimension requirements.

**Table 2: §30-4.2c Area and Dimension Regulations for Single-Family Detached Dwellings**

	Standard	Existing	Proposed	Complies?
Min. Lot Area	8.3 ac	2.41 ac	2.41 ac	No (2)
Min. Lot Width	200 ft.	± 11.87 ft.	± 11.87 ft.	No (2)
Min. Frontage (Race St)	60 ft.	2,119.42 ft.	2,119.42 ft.	Yes
Min. Frontage (Gephardt Farm Rd)	60 ft.	46.68 ft.	46.68 ft.	No (2)
<b>Min. Front Yard</b>	<b>75 ft.</b>	<b>11.28 ft.</b>	<b>11.06 ft.</b>	<b>No</b>
<b>Min. Side Yard (south)</b>	<b>50 ft.</b>	<b>50.04 ft.</b>	<b>31.57 ft.</b>	<b>No</b>
Min. Side Yard (east)	50 ft.	> 50 ft.	> 50 ft.	Yes
Min. Rear Yard	100 ft.	N/A	N/A	Yes
Max. Height (Feet) (1)	35 ft.	unknown	unknown	unknown
Max. Height (Stories) (1)	2 ½ sty	2 sty	2 sty	Yes
Notes:				
(1) Whichever is less				
(2) An existing, non-conformance				



8. **Building Height.** Union Township defines building height as:

*Height of Building shall mean the vertical distance measured from the average level of the finished grade along all the exterior walls of a building to:*

1. *The highest point of the roof, in the case of a flat roof;*
2. *One-half the distance between the top of the uppermost plate and the highest point of the roof, in the case of sloping roofs;*
3. *The highest point of any accessory structure or other irregularity which rises wholly or partly above the general or average roof line, and whose area equals or exceeds 10% of the ground floor area of the building which supports it.*

**The applicant shall calculate the proposed building height based on the Township definition and provide testimony identifying the same.**

9. **Parking Requirements.** The existing dwelling is a 3-bedroom single family detached dwelling, requiring 2 parking spaces under RSIS. A 2-car garage is proposed with a driveway that is more than 18-feet in length and 26-feet in width. RSIS considers the 2 car garage and driveway combination 3.5 parking spaces. The application addressing the required parking.

10. **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 high resource value lands that are important to maintaining water quality, water quantity, and sensitive ecological resources and processes.

**4.0 HOME OCCUPATION USE STANDARDS**

The proposed artist studio is a home occupation use. The Township has adopted the following standards, pursuant to §30-5.5h(1), for a home occupation use:

1. **Location.** The proposed home occupation use is accessory to the single-family detached dwelling use and is proposed to be located on the second story of the addition to the dwelling.
2. **Display.** The proposed artist studio does not include any show windows, display or advertising visible outside the premises.
3. **Exterior Storage.** §30-5.5h(1)(c) indicates that there shall be no exterior storage of materials, equipment or vehicles other than employee, visitor and resident parking, visible from any property line. **The applicant should provide testimony indicating if any exterior storage is proposed.**



4. **Building Appearance.** Home occupation accessory uses shall not alter the appearance of the residential structure or cause the premises to differ from the residential character by the use of colors, materials, construction, lighting, show windows or advertising visible outside the premises to attract customers or clients. While the proposed addition to the building will increase the overall size of the building on the premises; the applicant is proposing to use the same materials and colors as the existing building so the residential character of the building will not be changing. **Nonetheless, the Board should determine if a d(1) use variance is required for the addition containing the home occupation use.**
5. **Product Sales.** Per §30-5.5h(1)(e), no articles shall be sold or offered for sale at the premises except such as may be produced on the premises. **The applicant should provide testimony as to if any items will be sold on the premises and the nature of those items.**
6. **Commercial Vehicles.** Servicing by commercial vehicles for supplies and materials shall not be permitted. **The applicant shall provide testimony as to how the materials and supplies for the artist studio are obtained and brought to the premises.**
7. **Employees.** The home occupation shall be carried on only by inhabitants of the dwelling and not more than two additional employees. **The applicant shall provide testimony indicating if he will have any employees assisting him in the artist studio.**
8. **Floor Area.** Per §30-5.5h(1)(h), the floor area devoted to a home occupation shall not be more than 25% of the ground floor area of the principal residential structure, or 400 square feet, whichever is less. The applicant is proposing a 710.67 square foot artist studio with a 164 square foot balcony and full bathroom on the second floor of the addition. **D(1) variance relief is required for the size of the home occupation use.**
9. **Type of Home Occupation.** The applicant is proposing an artist studio as the home occupation use which is not identified as a prohibited home occupation use.
10. **Parking.** Per §30-5.5h(1)(j), no more than two additional off-street parking spaces shall be provided in addition to those required for normal residential use. Such parking shall be provided on the lot of the residence. As identified under Item 3.8 above, the applicant is required to have two parking spaces for the residential use and is proposing 3.5 parking spaces. Therefore, the applicant is proposing 1.5 off-street parking spaces in addition to those required for normal residential use.

**5.0 ENVIRONMENTAL PERFORMANCE REQUIREMENTS**

1. **Tree Removal.** Sheet 2 of the *Variance and Land Development Plan* depicts the removal of one tree. Per §30-6.4.b.5(a)(4), replacement of 50% of the basal area of the trees removed shall be required whenever more than 40% of the total basal area of trees that are 12 inches dbh and less than 24 inches dbh is removed. The applicant is not proposing to plant any new trees. **The applicant should identify the basal area of the tree to be removed to determine the number tree(s) that may be required to be planted.**

**Deciduous tree to be removed**

2. **Tree Protection Detail.** The tree protection detail provided on Sheet 5 identifies tree protection at the drop line; however, the “Standards for Soil Erosion and Sediment Control in New Jersey” 7<sup>th</sup> Edition, dated January 2014, revised July 2017 (Figure 9-3: Root Protection During Construction Guide) requires tree protect to the root protection zone. **The tree protection detail should be updated accordingly.**
3. **Carbonate Area District.** The subject property is located within the Carbonate Area District (CAD). The Board may waive the requirements of §30-6.9 so long as the applicant provides plans for and agrees to construct sufficient stormwater control measures for the proposed addition as to ensure that post-construction stormwater discharges are less than or equal to pre-construction stormwater discharges and that the plans and measures receive the approval of the Township Engineer. **This office defers to the Board Engineer regarding the granting of such waiver and/or compliance with §30-6.9 as necessary.**
4. **Stream Encroachment Line.** The Boundary Survey and the Variance and Lot Development Plan identify a NJDEP Stream Encroachment Line that is different than the NJDEP-regulated flood hazard area. A portion of the proposed driveway area is located within the NJDEP Stream Encroachment area. **The applicant should identify the source of the NJDEP Stream Encroachment Line, if it has been encumbered by a deed restriction, and why the NJDEP flood hazard area**



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approvals are based on the flood hazard area design flood line instead of the more restrictive NJDEP Stream Encroachment Line.

4. **Fence Height.** The applicant is proposing to relocate sections of the existing 6-foot-high white PVC fence. §30-5.5.h.2(b) states fences and walls shall have a maximum height of seven feet. The fence complies with the fence height requirements.
5. **Fence Detail.** The applicant is proposing to relocate the existing 6-foot-high white PVC fence. **A detail for the fence should be provided.**

**6.0 MISCELLANEOUS**

1. **Development Fees.** The applicant shall be required to pay the applicable residential development fees for increase in the equalized assessed value of the improved structure per §30-27.4b.4.

**7.0 D 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 “d” variance criteria for 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 variances. The applicant must justify the variances separately and each variance must satisfy both parts.
  2. **Positive Criteria.** To satisfy the criteria of a Use Variance, known as a (d)1 variance relief, the applicant may demonstrate there are sufficient “special reasons” for the grant of a d variance under two broad circumstances:
    - (1) When the refusal to allow the project would impose on the applicant an undue hardship, and/or
    - (2) When the requested relief advances a purpose of zoning as articulated in NJSA 40:55D-2
- A. **Undue Hardship.** Proof that the property is not reasonably adapted to a conforming use can satisfy the requirement of special reasons if it “results in economic inutility”. For variances from the standards pertaining to a use variance, the findings in the case, *Medici v. BPR Co.*, are relevant to the manner in which this application should be considered. The Medici





Court overruled *Henningsen v. Township of Randolph*, insofar as it held “[t]hat a parcel of land is zoned so as to preclude its most profitable use or even any economically feasible use has not been held in any reported decision to justify a subsection (d) variance; alleviation of economic hardship is not a purpose of zoning or by itself a special reason for a use variance.”

- B. Promotion of Zoning Purpose. An alternative approach to undue hardship, the term “special reasons” may also take its meaning from the purposes of zoning listed in NJSA 40:55D-2. In *Medici v. BPR Co.*, the Supreme Court singled out “promotion of the general welfare” as the one that “most clearly amplifies the meaning of special reasons”. As such, the applicant must demonstrate that the general welfare is served because the use is peculiarly fitted to the particular location for which the variance is sought.

However, courts have found that certain factors do not meet the NJSA 40:55D-2 criteria and are insufficient to support the grant of a variance. For example, testimony that the proposed use is the “highest and best use” of the property, that there will be a tax advantage to the municipality if the variance is granted, that the proposed use is more profitable than using the property for permitted uses, or that it will enhance property values of surrounding properties will not, per se, support the grant of a use variance.

The applicant shall also demonstrate the site suitability for the proposed health and wellness uses by indicating:

- i. Why the location of the site within the municipality or region is particularly suited to the use despite the zoning, and/or
- ii. What unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use.

The applicant shall demonstrate how approval of the variance promotes the purpose of the Township’s Zoning Ordinance and Master Plan, as well as the SDRP.

3. Negative Criteria. Should the applicant satisfy the positive criteria, it must also be demonstrated that 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. These factors are referred to as the negative criteria.



In *Medici v. BPR Co.*, the Court explained the substantial detriment phrase as follows:

*“the first prong of the negative criteria [requires] that the variance can be granted “without substantial detriment to the public good.” In this respect the statutory focus is on the variance’s effect on the surrounding properties. The board of adjustment must evaluate the impact of the proposed use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.”*

In *Medici v. BPR Co.*, the Court addressed two particular problems of arrogation of authority that emerged in determining whether a proposal satisfies the criterion “without substantial impairment to the intent and purpose of the zoning ordinance and zone plan” and requires that:

*“in addition to proof of special reason, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicants’ proofs and the boards’ findings [in this regard] must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.” (Emphasis added)*

## 8.o C 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 front yard setback, side yard setback and impervious coverage.

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.

**9.0 APPLICANT/ OWNER/CONSULTANTS**

1. **Applicant/Owner:** Andrew Pecoraro, 361 Race Street, Pittstown, NJ 08867.
2. **Engineer/Planner:** Wayne Ingram, PE, PP, Engineering & Land Planning Associates, Inc., 140 West Main Street, High Bridge, NJ 08829. Tel: 908.238.0544. Fax: 908.238.9572
3. **Architect:** Scott Eichlin, AIA, Frank Joseph Bell Architect, 39 Quakertown Road, Pittstown, NJ 08867. Tel: 908.730.8085. Fax: 908.730.8090.

**10.0 MATERIALS REVIEWED**

- Application to Planning Board/Board of Adjustment dated December 8, 2020.
- Boundary Survey, prepared by Dominick J. Venditto, III, 1 sheet, dated July 19, 2018.
- Partial Topographic Survey, prepared by Engineering & Land Planning Associates, Inc., 1 sheet, dated December 4, 2019.
- Variance and Lot Development Plan, prepared by Engineering & Land Planning Associates, Inc., 5 sheets, dated November 6, 2020, last revised February 26, 2021.
- Architectural Drawings, prepared by Frank Joseph Bell Architect, 3 sheets, dated December 30, 2020.



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- Site Capability Calculations, prepared by Engineering & Land Planning Associates, Inc., 1 sheet, dated March 25, 2020.
- Natural Resource Inventory Maps, prepared by Engineering & Land Planning Associates, Inc., 8 sheets, dated March 25, 2020.
- NJDEP Modified FHA Approval, dated February 12, 2021.
- NJDEP FWW Approval, dated February 9, 2021.
- Letter of Intent, prepared by Andrew Pecoraro, no date.

**11.0 SUMMARY**

The applicant is seeking approval to construct an addition to an existing single-family detached dwelling on an existing, undersized lot that will contain a two-car garage and studio with a full bathroom. The applicant is also proposing to expand the rear deck. Based on our initial review, the following variances and design exceptions are required or may be required, depending on the additional information submitted by the applicant. This list is not exhaustive and may be augmented by analysis performed by other Board professionals.

- a) Use Variances
  - §30-5.5h(1)(d) Building Appearance
  - §30-5.5h(1)(h) Floor Area
- b) Bulk Variances
  - §30.4.2b Impervious Surface Ratio
  - §30.4.2c Front Yard
  - §30.4.2c Side Yard
  - \* denotes a pre-existing non-conformance*
- c) Design Exceptions
  - None

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

- c: Grace Kocher, Board Secretary  
Mark Anderson, Esq.  
Robert Clerico, PE  
Andrew Pecoraro, applicant  
Wayne Ingram, PE, PP  
Scott Eichlin, AIA

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