



MEMORANDUM

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To: Union Township Zoning Board of Adjustment

From: Andrea Malcolm, PP, AICP
Emily Goldman, PP, AICP

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

Date: January 13, 2021

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.

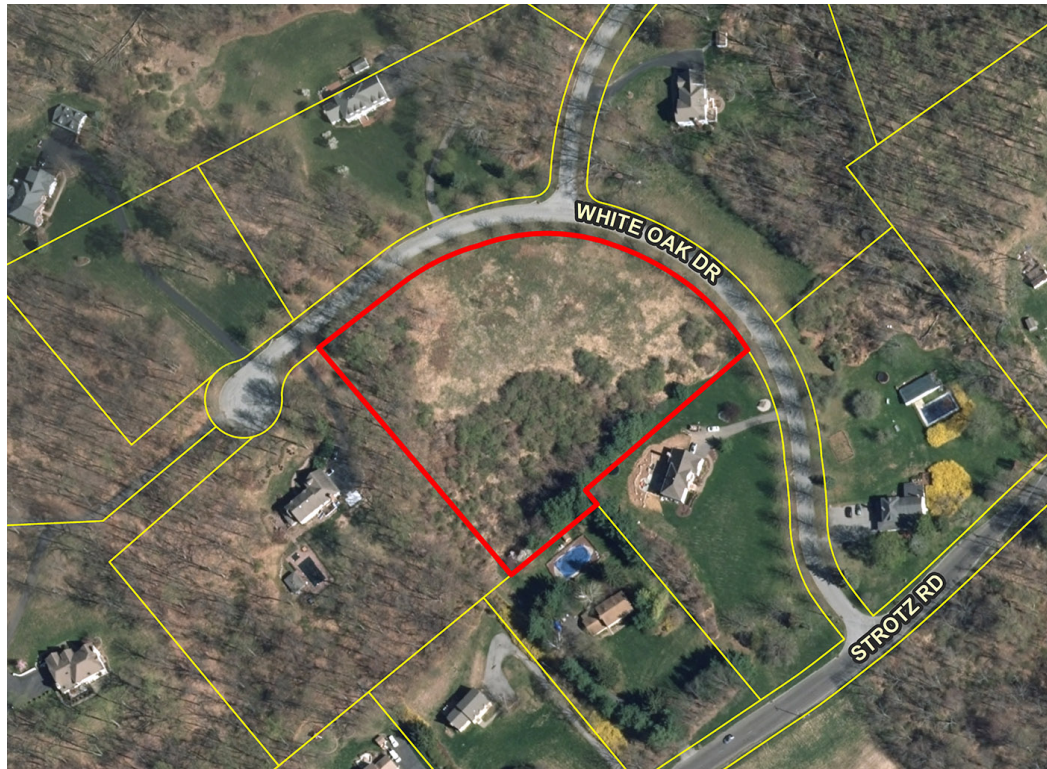
2.0 COMPLETENESS

The application was deemed complete at the December 3, 2020 Zoning Board of Adjustment meeting.

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



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Aerial photograph depicting existing conditions.

N.T.S. 

3.0 ZONING REQUIREMENTS

1. **Permitted Use.** The applicant is proposing to construct a single-family detached dwelling. Pursuant to §30-4.2.a.1(d), a B-1 Single-family detached residence and a H-6 swimming pool are permitted uses within the CM District.
2. **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.

However, since the applicant requires variance relief from the impervious surface ratio, as detailed more below, this section of the ordinance does not apply.

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.

- 3. **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	0.32	No
Max. Impervious Surface Ratio (2)	0.03	0.07	No
Min. Gross Site Area	8.3 acres	3.124 acres	No
Min. Lot Area	8.3 acres	3.124 acres	No
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) 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.			

- 4. **Gross Density.** §30.4.2b permits a maximum gross density of 0.12 dwelling units per acre. The applicant is proposing a gross density of 0.32 dwelling units per acre. **A “d(5)” variance is required. The applicant should provide testimony identifying how the subject site will accommodate the problems associated with a gross density larger than permitted in the ordinance.**



5. **Impervious Surface Ratio.** 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.**

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.**

6. **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 3.124 acres. This is a pre-existing condition that was created as part of a subdivision in 1993. **A “c” variance is required. The applicant should indicate if any land is available to increase the gross site area of the subject site, if any, to reduce the extent of the lot area variance.**
7. **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 3.124 acres. This is a pre-existing condition that was created as part of a subdivision in 1993. **A “c” variance is required. The applicant should indicate if any land is available to increase the lot area of the subject site, if any, to reduce the extent of the lot area variance.**
8. **Area and Dimensional Requirements.** The applicant does not meet one (1) of the area and dimension requirements; which is 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	Proposed	Complies?
Min. Lot Area	8.3 acres	3.124 acres	No
Min. Lot Width	200 feet	531.03 feet	Yes
Min. Frontage	60 feet	635.84 feet	Yes
Min. Front Yard	75 feet	76 feet	Yes
Min. Side Yard (west)	50 feet	110.0	Yes
Min. Side Yard (east)	50 feet	183.7	Yes
Min. Rear Yard	100 feet	N/A	Yes
Max. Height (Feet) (1)	35 feet	26.72 feet	Yes
Max. Height (Stories) (1)	2 ½ stories	2 stories	Yes
Notes:			
(1) Whichever is less			

9. **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.
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 ENVIRONMENTAL PERFORMANCE REQUIREMENTS

1. **Steep Slopes.** The applicant is proposing disturbance of 934 sf of steep slopes ≥ 20%, representing 35.56% of all steep slopes ≥ 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 ≥ 20%. The areas of steep slopes ≥ 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.**
2. **Tree Removal.** The plans depict the proposed septic disposal area partly located within a wooded area of the site. The plans have been revised to indicate the removal of 2 trees greater than 12” dbh. The applicant proposes 34 replacement trees to replace 50% of the basal area of the trees to be replaced, as required by §30-6.4.b.5(a)(4), in two phases. The first phase of plantings will contain 18 trees



and the second phase will contain 16 trees. The Landscaping Plan also indicates that the applicant will install the 18 trees in Phase 1 and submit a bond for the remaining 16 trees. **The Landscaping Plan should be revised to distinguish the proposed trees in each phase.**

3. **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” 7th 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.**
4. **Retaining Wall Height.** The applicant is proposing a series of retaining walls with a maximum height of four (4) feet with an aluminum fence of unknown height above. §30-5.5.h.2(b) states fences and walls shall have a maximum height of seven feet. **The applicant should indicate the height of the proposed aluminum fence to determine compliance.**
5. **Fence.** The Landscaping Plan indicates an aluminum fence will be located on top of the retaining walls. **A detail for the fence should be provided.**

5.0 SWIMMING POOL REQUIREMENTS

1. **Setbacks.** §30-5.5.h.6(a)(2) requires that swimming pools shall be located not less than 15 feet back from the front building setback line and not closer than 10 feet to property lines. The proposed swimming pool is located in the rear yard and approximately 115 feet from the side lot line.
2. **Lighting.** §30-5.5.h.6(c) indicates that outdoor lighting, if used, shall be installed in such a way as to be shielded and not to reflect toward or into the interior of adjacent residential properties. **The applicant should indicate if any outdoor lighting is proposed and provide details of such lighting, as necessary.**
3. **Setback from Septic Systems.** §30-5.5.h.6(e) requires a minimum isolation distance of 25 feet between swimming pools and any sewage disposal system. The proposed swimming pool is approximately 100 feet from the septic disposal field.
4. **Fencing.** §30-5.5.h.6(k)(1) requires swimming pools to be completely enclosed with a minimum four foot high chain-link, stockade, picket (not exceeding three inch spacing), solid wooden fence, building wall, or such other material as may be acceptable, at the discretion of the building inspector. **The applicant should**



identify the location(s) of the required fence on the Site Plans and provide a detail of the proposed fence.

6.0 MISCELLANEOUS

1. **Development Fees.** The applicant shall be required to pay the applicable residential development fees for the construction of the new single-family detached dwelling per §30-27.4.

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 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.** To satisfy the positive criteria, also known as “special reasons”, the applicant must demonstrate that a proposed project carries out a purpose of zoning OR that there is a substantial practical hardship to the development of a conforming structure on the property. In establishing special reasons for a [Density] variance, the courts have held that the applicant need not show the site is particularly suited for more intensive development. Rather, the applicant must show that the site can accommodate the problems associated with a [density] larger than permitted by the ordinance.¹
3. **Negative Criteria.** Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variances 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. Substantial detriments are usually nuisance related such as noise, dust, trash, parking, traffic, visual distraction, light and aesthetics that cannot be adequately mitigated. The applicant should address any impacts to the character of the neighborhood resulting from the proposed development of a single family home in excess of the maximum permitted density. **The applicant should also address any potential negative**

¹ Cox & Koenig, *New Jersey Zoning and Land Use Administration* (GANN, 2018), p. 752.



impacts due to the proposed disturbance of steep slopes as well as any mitigation measures that are proposed to address potential negative impacts.

b. Negative Criteria: Impact to the zone plan. The applicant must show that the relief can be granted without substantially impairing the zone plan and zoning ordinance.

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 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.



9.0 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.

10.0 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., 8 sheets, dated October 1, 2020, revised December 14, 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.
- Architectural Drawings, prepared by The Martinson Group, 15 sheets, dated August 31, 2020.
- Letter of response, prepared by Theodore H. Bayer, PE, Bayer-Risse Engineering, Inc., dated November 16, 2020.

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