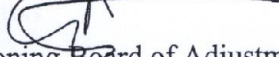


**MASON, GRIFFIN & PIERSON**

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COUNSELLORS AT LAW

**MEMORANDUM**

To: West Windsor Township Zoning Board of Adjustment

From: Edwin W. Schmierer, Esq.   
West Windsor Township Zoning Board of Adjustment Attorney

Date: May 23, 2023

Re: **West Windsor Township Zoning Board of Adjustment - Paul Meers and Stacey Fox Use and Bulk Variance Application No. ZB22-05; Block 74, Lots 40 and 41 West Windsor Township Tax Map; 29 Berrien Avenue; R-1A Residential Zoning District: REVISED PLANS**

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The West Windsor Township Zoning Board of Adjustment ("Board") will continue the hearing on the above-referenced application at its meeting on June 1, 2023. The Board conducted its initial hearing on April 6, 2023 and continued the hearing to the above-referenced date.

Following the initial hearing on April 6, 2023, the applicants retained the services of Marina Rubina, Architect, and have substantially changed their application to demolish their existing carport which is in disrepair and construct a new structure on the carport footprint. The new structure will consist of a garage/workshop area on the first floor. There is no longer any residential apartment use proposed on the first floor. The second floor level continues to be used for residential purposes and will consist of an office or "guest" living quarters. The applicants have indicated that the second floor space would be utilized from time to time by family members or guests. The main entrance to the residential area on the second floor has had the entrance relocated with stairs in the back of the structure. For the second floor space, the

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applicants have offered to deed restrict that space so that it would be used by them and any future owners of the property as temporary "guest" space and would not be permanently occupied by any family members nor would it be able to be offered as rental property.

The revised plans still involve the construction of a "dwelling unit" in a separate structure as defined by Section 200-4 of the West Windsor Township Land Use Ordinance. The second floor will consist of a full bathroom, bedroom, sitting area and a bathroom sink. This area is intended for residential use, has access to the outside without crossing another dwelling and has living and sleeping facilities for the exclusive use of the occupants of this space.

Therefore, the applicants still require the d(1) use variance since within the R-1A Zoning District, which is a single-family zoning district, more than one structure containing a dwelling unit is not a permitted use. Therefore, the variance relief as outlined in my initial January 6, 2023 memorandum to the Board still represents an outline for the zoning relief that the revised applicants' plans will need if the proposed structure on the site of the carport is to be approved by the Board.

cc: *(via email):*

Samuel J. Surtees, West Windsor Township Land Use Manager

Patricia Thompson, Zoning Board of Adjustment Secretary

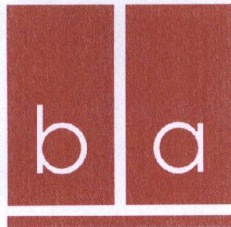
David Novak, PP, AICP, Burgis Associates, Inc.

Daniel Dobromilsky, CLA, Board Landscape Architect

Ian Hill, PE, Van Cleef Associates, Board Engineering Consultant

Paul Meers and Stacey Fox, Applicants





COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

**B U R G I S**  
ASSOCIATES, INC.

Principals:  
*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*  
*David Novak PP, AICP*

## MEMORANDUM

To: West Windsor Zoning Board of Adjustment  
West Windsor Division of Land Use

From: David Novak PP, AICP

Subject: Paul Meers and Stacey Fox  
d(1) Use Variance, d(4) Floor Area Ratio Variance, c Variance Relief  
Block 74 Lots 40 and 41  
29 Berrien Avenue

Date: May 22, 2023

BA#: 3908.20

WWT#: 22-05

### Introduction

The following memorandum is intended to supplement our prior planning review memorandum dated January 16, 2023.

The applicant, Paul Meers and Stacey Fox, has submitted an application seeking "d(1)" use variance relief, "d(4)" floor area ratio (FAR) relief, and "c" variance relief to replace an existing carport with an accessory dwelling unit. The site, which is identified by municipal tax records as Block 74 Lots 40 and 41, is located at 29 Berrien Avenue in the R-1A Low Density Residential District.

In addition to the application forms and application checklists, the following has been submitted for review:

1. Architectural plan.
2. Existing condition plan.
3. Property record card.
4. Copy of tax map.
5. Aerial map and site photographs.
6. Zoning Board Resolution of Approval dated August 24, 2017.
7. Summary of changes.
8. Memorandum from Marina Rubina, Architect, dated May 11, 2023.
9. Drywell figure.



## Master Plan

As per the 2020 Land Use Plan, the site is located in the Berrien City land use category. The 2020 Plan notes that this land use category recognizes the unique development patterns of the Berrien City area and Princeton Junction. Throughout the 1920s and 1930s, this neighborhood was subdivided into multiple lots, some of which were as small as 5,000 square feet. As was the custom during those times, families would purchase multiple lots depending on their budget and their anticipated household size. As a result, the lot sizes throughout the neighborhood vary greatly in size and shape. The 2020 Plan found that residential lot sizes in Berrien City are typically approximately 10,000 square feet in size; however, nearly thirteen percent of all residential properties in this community have lot sizes of less than 7,500 square feet.

The 2020 Plan indicates that Berrien City is located in the R-1A District which refers to the use, bulk, and area regulations of the R-1/C District. The R-1/C District establishes a minimum lot size of one and two-thirds acre for conventional residential developments. Nevertheless, no residential lot within Berrien City meets this area requirement.

Therefore, the 2020 Plan establishes that the main intent of the Berrien City land use category is two-fold: to recognize and preserve the existing, historic, and unique development pattern of the Berrien City community while also adequately addressing the reasonable expectations of homeowners in regard to modern home improvements.

The 2020 Plan recommends that the Township review the existing development patterns in this community in order to develop new and responsive zoning standards which are more reflective of the area's existing development patterns. These standards should address the potential of tear-downs of the existing housing stock with significantly larger dwellings which may be out of character with the surrounding neighborhood. It is envisioned that all new residences constructed in Berrien City be developed at a scale that is relatively similar to the existing housing in the area. As such, the 2020 Plan notes that the Township may wish to investigate the propriety of a form-based code which would allow homeowners to upgrade their properties while still maintaining the established character of the area.



## Zoning

The site is located in the R-1A Residence District. The following table outlines the zoning regulations for this district and the applicant's compliance with those standards.

*Table 1: R-1A Resident District Bulk Standards*

Area & Bulk Regulations	R-1A	Existing	Proposed	Section
Minimum Lot Area (sf)	1 ⅔	(ex) 0.2997	(ex) 0.2997	200-159A.
Minimum Lot Frontage (ft)	85	(ex) 72.00	(ex) 72.00	200-159B.
Minimum Lot Width (ft)	175	(ex) 72.00	(ex) 72.00	200-159C.
Min. Lot Depth (ft)	175	181.00	181.00	200-159D.
Minimum Front Yard (ft)	40	(app) 11.00	(app) 11.00	200-159E.(1)
Minimum Rear Yard (ft)	20	> 20.00	> 20.00	200-159E.(2)
Minimum Side Yard (ft)	20	(ex) 11.00	<b>(V) 11.00</b>	200-159E.(3)
Maximum FAR (%)	13	(ex) 13.70	<b>(V) 16.40</b>	200-159F.
Max. Improvement Cov. (%)	17	Not Specified	Not Specified	200-159G.
Max. Building Height (st/ft)	2.5/35	Not Specified	Not Specified	200-159H.

*(ex) Nonconforming Condition; (V) Variance; (app) Approved \* estimate*

## Variance Relief

The following is noted regarding variance relief.

### "d(1)" Use Variance Relief

The applicant has requested variance relief pursuant to NJSA 40:55D-70d.(1) of the Municipal Land Use Law (MLUL) for a use or principal structure in a district restricted against such use or principal structure. An applicant requesting a "d" variance must demonstrate that special reasons exist for the granting of the variance, and that the granting of such variance will further the purposes of the MLUL (positive criteria). In addition, the applicant must prove that there will be no substantial detriment to the public good and no substantial impairment to the intent of the Master Plan. For a non-inherently beneficial use, the applicant has an enhanced burden of proof to demonstrate that the site is particularly suited for the use, and that the use is not inconsistent with the Master Plan's intent.

We recommend that the discussion of the proposed use consider recent trends regarding accessory dwelling units throughout the state, which have increased in popularity over the years due to rising housing costs and aging-in-place efforts.



### "d(4)" Floor Area Ratio (FAR) Variance Relief

The applicant has requested variance relief pursuant to NJSA 40:55D-70.d(4) of the MLUL for exceeding the permitted FAR. The R-1A District establishes a maximum FAR of thirteen percent which equates to approximately 1,697 square feet for the subject site, whereas the applicant has proposed a FAR of 16.4% which equates to approximately 2,141 square feet.

Randolph Town Center v. Township of Randolph, 324 N.J. Super at. 416 provides guidance for Boards of Adjustments in evaluating applications requesting "d(4)" variance relief. In that decision, the Court held that in establishing special reasons for a FAR variance, boards should look to *Coventry Square v. Westwood Zoning Board of Adjustment* and not *Medici v. BPR* for guidance. Therefore, an applicant requesting "d(4)" variance relief does not need to show that the site is particularly suited for more intensive development. Rather, an applicant must demonstrate that the site will accommodate the problems associated with a floor area larger than that permitted by the ordinance.

### "c" Variance Relief

The applicant requires variance relief pursuant to NJSA 40:55D-70c.(1) and/or (2) of the Municipal Land Use Law (MLUL) for the proposed setback of the accessory dwelling unit. Both the R-1A District and Section 200-226A.(2) which pertains to accessory structures require a side yard setback of twenty feet, whereas the proposed accessory dwelling unit has a setback of eleven feet.

The statute provides two approaches to (c) variance relief, commonly referred to as the "physical features" test and the "public benefits" test.

1. Physical Features Test. An applicant may be granted c(1) variance relief when it is demonstrated that the noncompliant condition is caused by: 1) an exceptional narrowness, shallowness, or shape of the property; 2) exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or; 3) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
2. Public Benefits Test. An applicant may be granted c(2) variance relief where it can prove the following: 1) that the granting of the variance will advance the intents and purposes of the Municipal Land Use Law; 2) that the benefits of granting the variance substantially outweigh any potential detriments. The benefits are required to be public benefits rather than a benefit that simply accrues to the property owner.

In addition to the above, the applicant must address the Negative Criteria of the statute. To meet the negative criteria, an applicant must demonstrate the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the master plan and zoning ordinance.



## Planning and Zoning Review

We offer the following for the Board's consideration.

### Summary of Changes

The applicant should provide a summary of the proposed changes from the prior submittal. We note the following:

1. Interior Layout. In the submitted "Summary of Changes" memorandum, the applicant notes that the lower level will consist of no interior walls, no bedroom, no bathroom, and a slop sink for clean-up and safety. The applicant notes that the ground floor is no longer proposed to be utilized for an accessory apartment, but rather as workshop.

In addition, the applicant notes that the upper level will consist of a full bathroom, office/bedroom, sitting/TV area, no closet, no kitchen area, and a bathroom sink (i.e. no kitchen sink). Testimony should be provided as to whether revised architectural and/or layout plans were prepared to reflect these changes for the Board's review.

2. Facade Change. The applicant notes that the facade will consist of a garage door, a single door, and windows. The porch and upper deck have been removed. In addition to being utilized as a workshop, testimony should be provided as to whether the lower level will also be utilized as a garage.
3. Entrance to Upper Level. The applicant notes that the entrance to the upper level has been relocated to the rear of the property to preserve the neighbor's view. The applicant should compare the size and positioning of the proposed structure to the size of the existing garage.

### Calculation of Floor Area Ratio (FAR)

As previously noted, the applicant has requested variance relief pursuant to NJSA 40:55D-70d.(4) of the Municipal Land Use Law (MLUL) for an increase in the permitted floor area ratio (FAR). For reference, "floor area" is defined by Section 200-4 of the Township's land use regulations as follows. Those portions of a building which are not included as floor area are underlined and italicized.

The sum of the gross horizontal areas of the several floors of a building or group of buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings. Floor area shall not include roof overhangs less than three feet or any floors or portions thereof contained on terraces or balconies projecting beyond the exterior face of the building, areas occupied permanently by mechanical equipment,) any space where the floor-to-ceiling height shall be less than seven feet, provided that such space shall be used only for storage, building maintenance and operation activities, and roofed or enclosed areas devoted exclusively to off-street parking and loading spaces in excess of the number required by ordinance. Basements



which satisfy applicable construction code definitions of habitable space, whether finished or unfinished, are included in floor area calculations for residential purposes.

The applicant should confirm whether the proposed FAR was changed following the amendments to the plan. The applicant should also confirm that the existing and proposed FAR was calculated pursuant to the Township's definition of "floor area." Specifically, the applicant should confirm that the calculated floor area does not include any of the provisions which are specifically exempt from that term.

Improvement Coverage

Section 200-159G. establishes a maximum improvement coverage of seventeen percent for the R-1A District. This equates to approximately 2,219 square feet of permitted coverage on the site. The applicant should testify as to whether the proposed changes result in an increase in impervious coverage.

Proposed Accessory Dwelling Unit

The applicant has indicated that they would deed restrict the upper story of the proposed accessory dwelling unit to preclude renting to tenants who are not family.

Comparison to Neighborhood

A table as well as two maps have been provided with this memorandum which respectively identify those dwellings within the vicinity which exceed the FAR standards established by the R-1A District, as well as those which exceed the proposed FAR of the subject site (assuming the FAR remains the same from the prior submittal). This information was based upon publicly available tax information. As shown, thirteen properties in the area presently exceed the FAR permitted by the R-1A District, while six properties exceed the FAR proposed by the applicant.

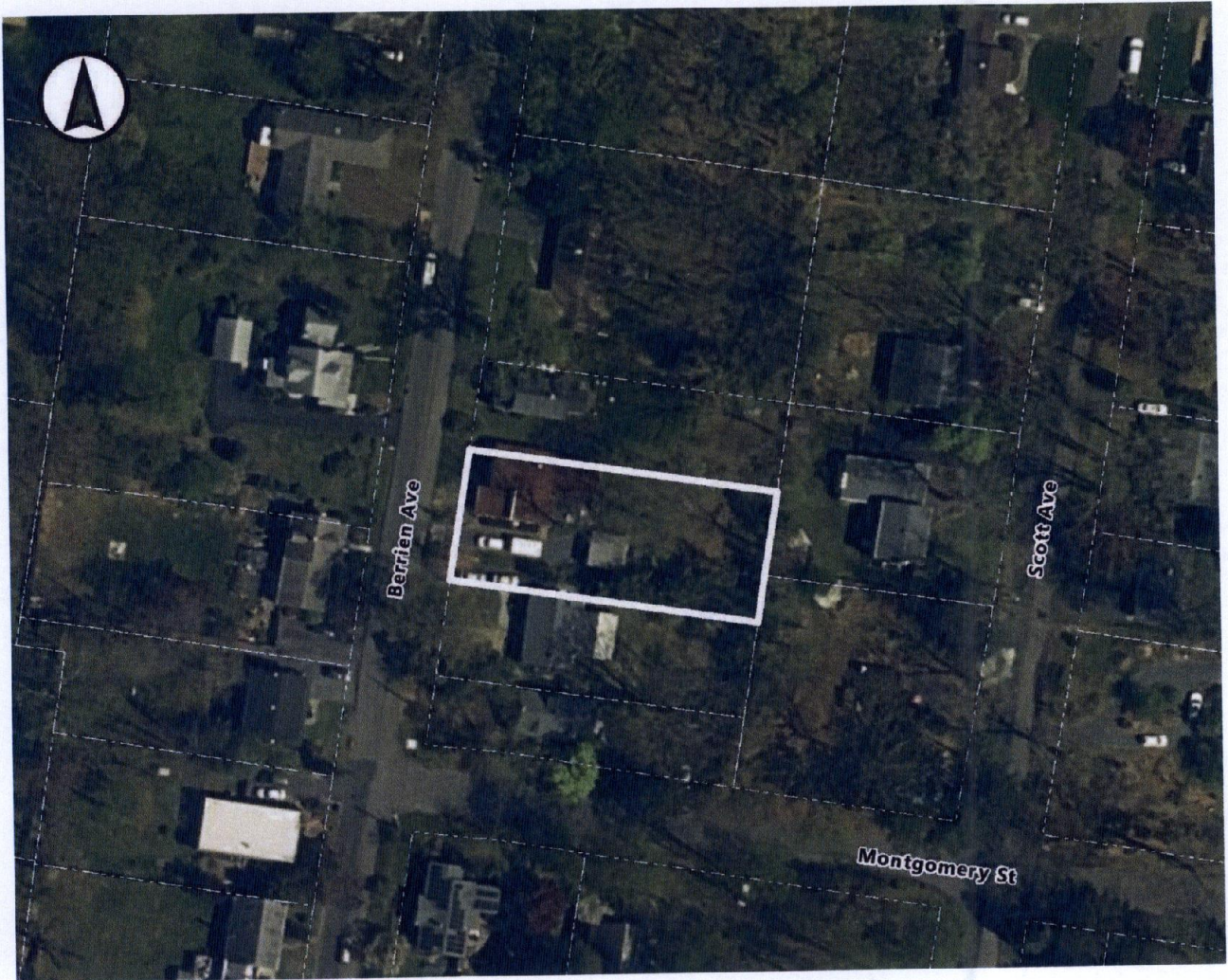
*Table 2: FAR Analysis*

Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
68	7	4 Berrien Ave	9,147.6	1,278.0	13.97%	Yes	No
68	8	6 Berrien Ave	9,051.8	1,040.0	11.49%	No	No
68	9	8 Berrien Ave	18,099.2	796.0	4.40%	No	No
68	11	12 Berrien Ave	9,064.8	714.0	7.88%	No	No
68	12	14 Berrien Ave	18,295.2	1,712.0	9.36%	No	No
68	14	16 Berrien Ave	9,051.8	1,245.0	13.75%	Yes	No
68	15	18 Berrien Ave	9,064.8	1,659.0	18.30%	Yes	Yes
68	16	20 Berrien Ave	9,064.8	1,481.0	16.34%	Yes	Yes
68	17	22 Berrien Ave	13,599.4	1,692.0	12.44%	No	No



Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
69	19	24 Berrien Ave	13,573.3	1,814.0	13.36%	Yes	No
69	20	28 Berrien Ave	27,150.9	1,636.0	6.03%	No	No
69	23	32 Berrien Ave	15,202.4	1,536.0	10.10%	No	No
69	43.01	34 Berrien Ave	11,321.2	2,589.0	22.87%	Yes	Yes
69	74.01	34.A Berrien Ave	12,101.0	1,458.0	12.05%	No	No
69	75.01	36 Berrien Ave	18,730.8	3,108.0	16.59%	Yes	Yes
69	88	40 Berrien Ave	10,301.9	1,393.0	13.52%	Yes	No
75	25	3 Berrien Ave	9,152.0	1,308.0	14.29%	Yes	No
75	26	5 Berrien Ave	18,134.0	1,320.0	7.28%	No	No
75	28	9 Berrien Ave	9,064.8	1,536.0	16.94%	Yes	Yes
75	29	11 Berrien Ave	9,051.8	1,312.0	14.49%	Yes	No
75	30	13 Berrien Ave	9,051.8	918.0	10.14%	No	No
75	31	15 Berrien Ave	9,051.8	840.0	9.28%	No	No
75	32	17 Berrien Ave	9,069.2	900.0	9.92%	No	No
75	33	19 Berrien Ave	9,051.8	1,058.0	11.69%	No	No
75	34	21 Berrien Ave	22,215.6	1,546.0	6.96%	No	No
74	37	25 Berrien Ave	22,668.6	1,322.0	5.83%	No	No
74	39	27 Berrien Ave	9,051.8	1,635.0	18.06%	Yes	Yes
74	42	31 Berrien Ave	11,242.8	1,260.0	11.21%	No	No
74	44	41 Montgomery Street	7,788.5	1,449.0	18.60%	Yes	Yes
73	90	40 Montgomery Street	26,541.1	1,138.0	4.29%	No	No





Map 1: Aerial of Subject Site (scale: 1" = 100')