

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(4) Floor Area Ratio Variance and c Variance Relief  
Block 74 Lots 40 and 41  
29 Berrien Avenue

**Date:** June 27, 2023

**BA#:** 3908.20

**WWT#:** 22-05

### Introduction

The following memorandum is intended to supplement our prior planning review memorandums dated January 16, 2023 and May 22, 2023. The applicant, Paul Meers and Stacey Fox, has submitted an application seeking “d(4)” floor area ratio (FAR) relief and “c” variance relief to replace an existing carport with a two-story accessory structure. 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.
10. Email from Stacey Fox, dated June 26, 2023.
11. Survey prepared by Layou Inc., dated May 19, 2023 (no revision date).
12. Renderings of proposed structure.

## 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 Pan 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 ⅓	(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) 9.80	<b>(V) 9.80</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(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 2,149.47 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 setback of the proposed accessory structure. 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 structure has a setback of 9.8 feet. For reference, the existing carport also has a setback of 9.8 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.

1. Definition of Dwelling Unit. At the prior Zoning Board of Adjustment hearing on June 1, 2023, the applicant and the Board discussed the proposed accessory structure and whether it met the definition of a “dwelling unit.” For reference, Section 200-4 of the Township’s land use regulations defines a dwelling unit as follows:

*“a group of interrelated rooms or structures, intended or designed for nontransient residential use of one family, separated from other dwelling units by lockable doors, having access to the outside without crossing another dwelling and having living and sleeping facilities, cooking facilities, fixed or portable, and complete sanitary facilities for the exclusive use of the occupants thereof. [emphasis added]”*

Particular consideration was given to the “cooking facilities, fixed or portable” component of the definition of “dwelling unit.” While the applicant noted at the prior hearing that there would be no cooking facilities in the structure, a revised interior plan had not been submitted at that time.

The applicant has subsequently submitted a revised interior plan which does not show a kitchenette nor any cooking facilities. As confirmed in a discussion held with the Board attorney and with Township staff, the proposed structure no longer meets the definition of a “dwelling unit” due to the elimination of this feature. Therefore, the applicant no longer requires “d(1)” use variance relief. Nevertheless, and as previously noted, variance relief pursuant to NJSA 40:55D-70.d(4) is still required for exceeding the allowable floor area ratio.

2. Revised Floor Plans. The applicant has provided revised floor plan renderings of the proposed accessory structure. The first floor will consist of a garage space, a slop sink, and a bench. The second floor will consist of a bathroom, an office/guest room, a meeting/TV room, and an upper deck entry. Access to the site is to be provided by an exterior staircase.
3. Office and Meeting Room. As noted above, the second story of the proposed accessory structure has rooms identified as “office/guest” and “meeting/TV.” Testimony should be provided as to whether these rooms are intended to be utilized as a “home occupation” or as a “work from home” area. We note that pursuant to Section 200-232 of the Township’s zoning regulations, home occupations are only permitted in dwelling units. Thus, should a home occupation be proposed in this structure, use variance relief pursuant to NJSA 40:55D-70.d(1) would be required. No such variance relief would be required for a “work from home” area.
4. Staircase and Improvement Coverage. At the prior Zoning Board of Adjustment hearing on June 1, 2023, the applicant noted that access to the second floor of the proposed accessory structure would be provided from the interior of the building. However, the revised architectural drawing shows that the second floor will still be accessed from an exterior staircase, as previously proposed.

This should be discussed and confirmed. The applicant should clarify whether the staircase will extend past the footprint of the existing carport. If so, it will contribute to the site’s improvement coverage. Based upon our estimates, the site presently has an improvement coverage of approximately 30.8% which equates to 4,024 square feet. Since the R-1A District establishes a maximum improvement coverage of 17%, any additional coverage will require “c” variance relief.

5. Calculation of Floor Area Ratio. At the prior Zoning Board of Adjustment hearing, the applicant and the Board discussed the calculation of the proposed floor area ratio. For reference, Section 200-4 of the Township's land use regulations defines floor area as follows:

*"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 has subsequently revised the architectural drawing to identify that the first floor will consist of a garage large enough to accommodate "one mid-sized vehicle." As confirmed in a discussion with Township staff and the Board attorney, this space should not be counted as floor area. It was also confirmed that there are no restrictions on garage spaces being heated or air conditioned.

Thus, the proposed FAR is 16.40% which equates to approximately 2,149.57 square feet of floor area. This consists of the existing floor area of 1,788 square feet (as identified by the Township's online tax records) as well as the proposed floor area of 361.57 square feet.

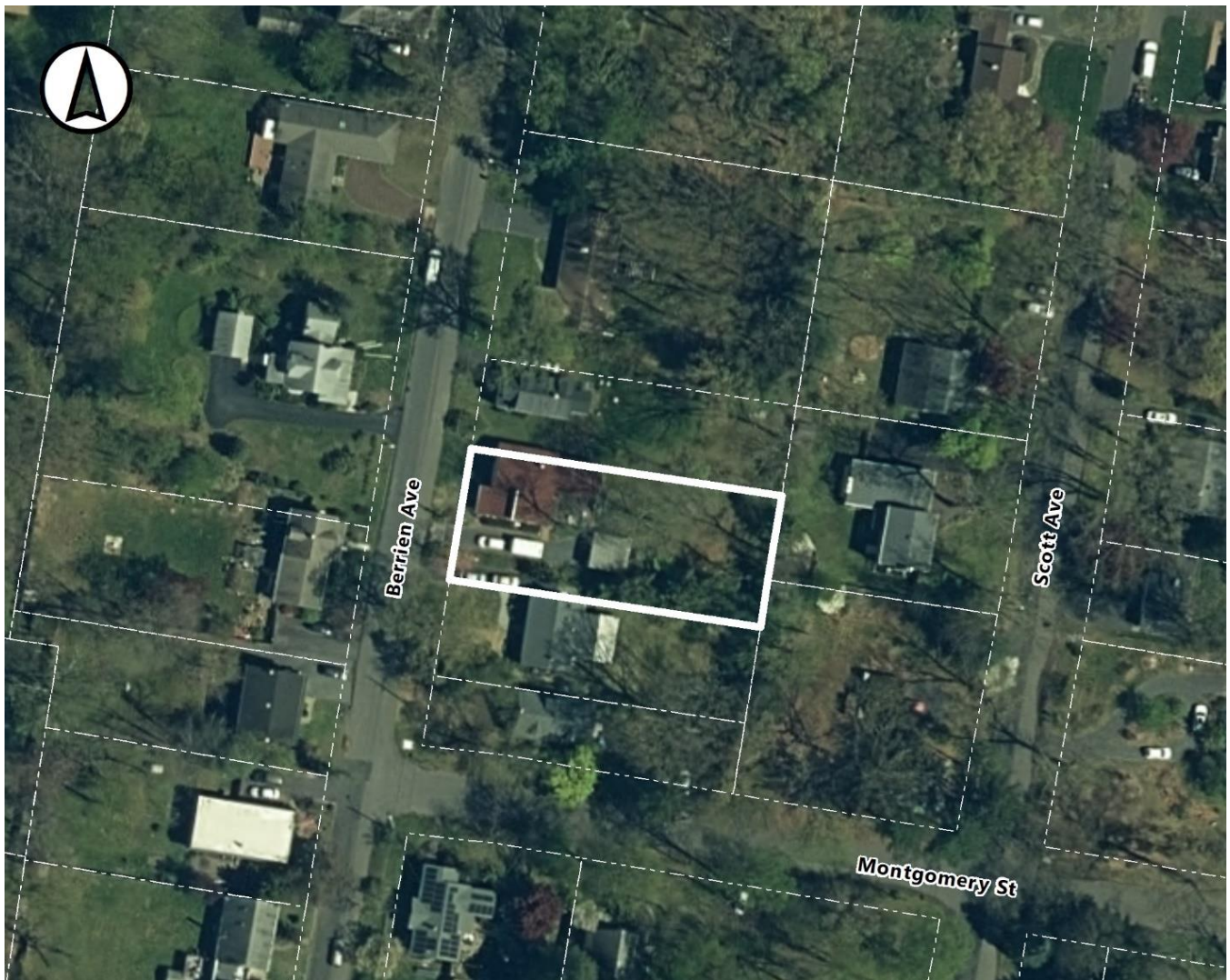
## Comparison to Neighborhood

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. 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*

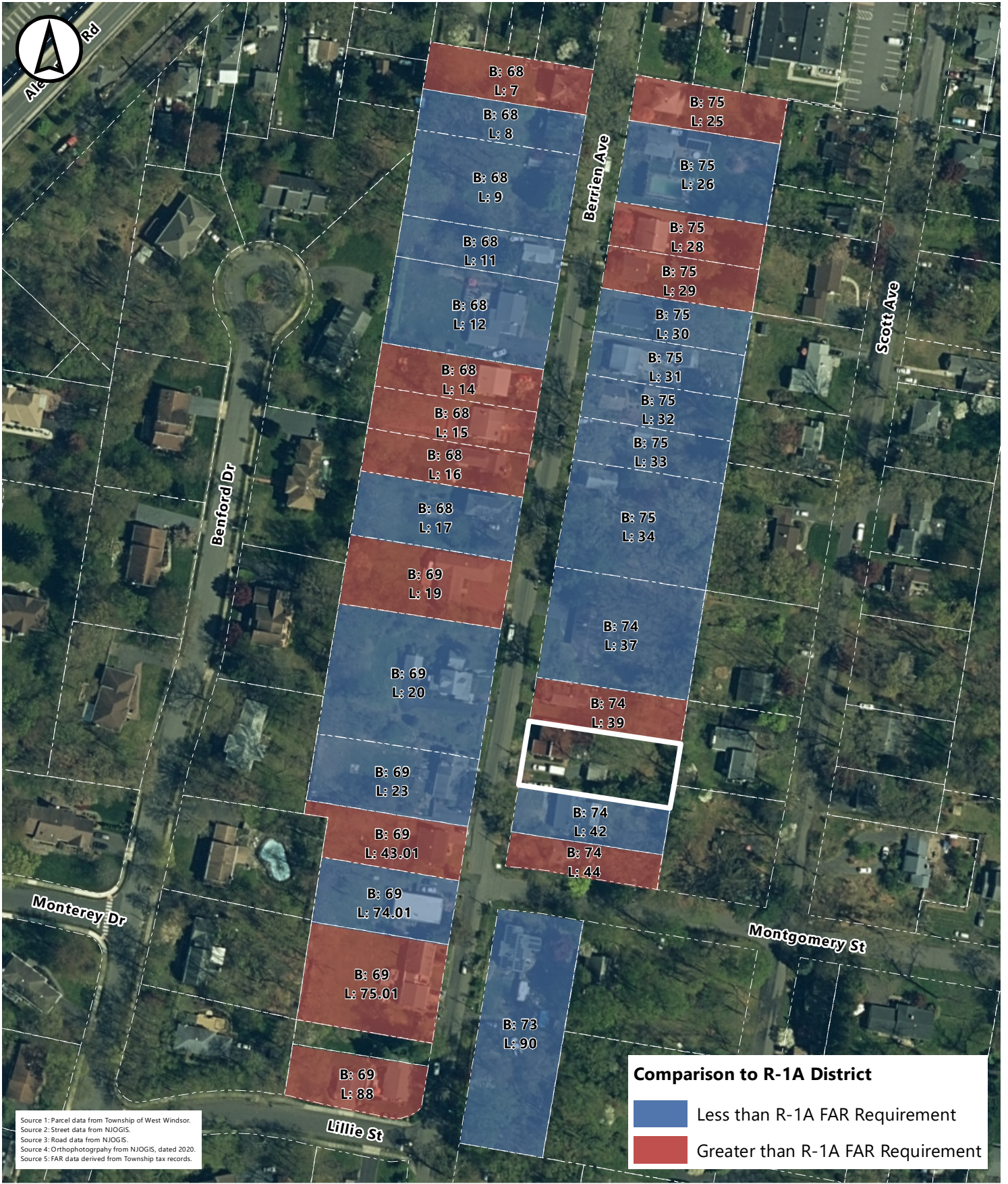
Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
68	7	4 Berrien Ave	9,147.6	1,278.0	13.97%	<b>Yes</b>	No
68	8	6 Berrien Ave	9,051.8	1,040.0	11.49%	No	No
68	9	8 Berrien Ave	18,099.2	796.0	4.40%	No	No
68	11	12 Berrien Ave	9,064.8	714.0	7.88%	No	No
68	12	14 Berrien Ave	18,295.2	1,712.0	9.36%	No	No
68	14	16 Berrien Ave	9,051.8	1,245.0	13.75%	<b>Yes</b>	No
68	15	18 Berrien Ave	9,064.8	1,659.0	18.30%	<b>Yes</b>	<b>Yes</b>
68	16	20 Berrien Ave	9,064.8	1,481.0	16.34%	<b>Yes</b>	No
68	17	22 Berrien Ave	13,599.4	1,692.0	12.44%	No	No
69	19	24 Berrien Ave	13,573.3	1,814.0	13.36%	<b>Yes</b>	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%	<b>Yes</b>	<b>Yes</b>
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%	<b>Yes</b>	<b>Yes</b>
69	88	40 Berrien Ave	10,301.9	1,393.0	13.52%	<b>Yes</b>	No
75	25	3 Berrien Ave	9,152.0	1,308.0	14.29%	<b>Yes</b>	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%	<b>Yes</b>	<b>Yes</b>
75	29	11 Berrien Ave	9,051.8	1,312.0	14.49%	<b>Yes</b>	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

Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
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%	<b>Yes</b>	<b>Yes</b>
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%	<b>Yes</b>	<b>Yes</b>
73	90	40 Montgomery Street	26,541.1	1,138.0	4.29%	No	No



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



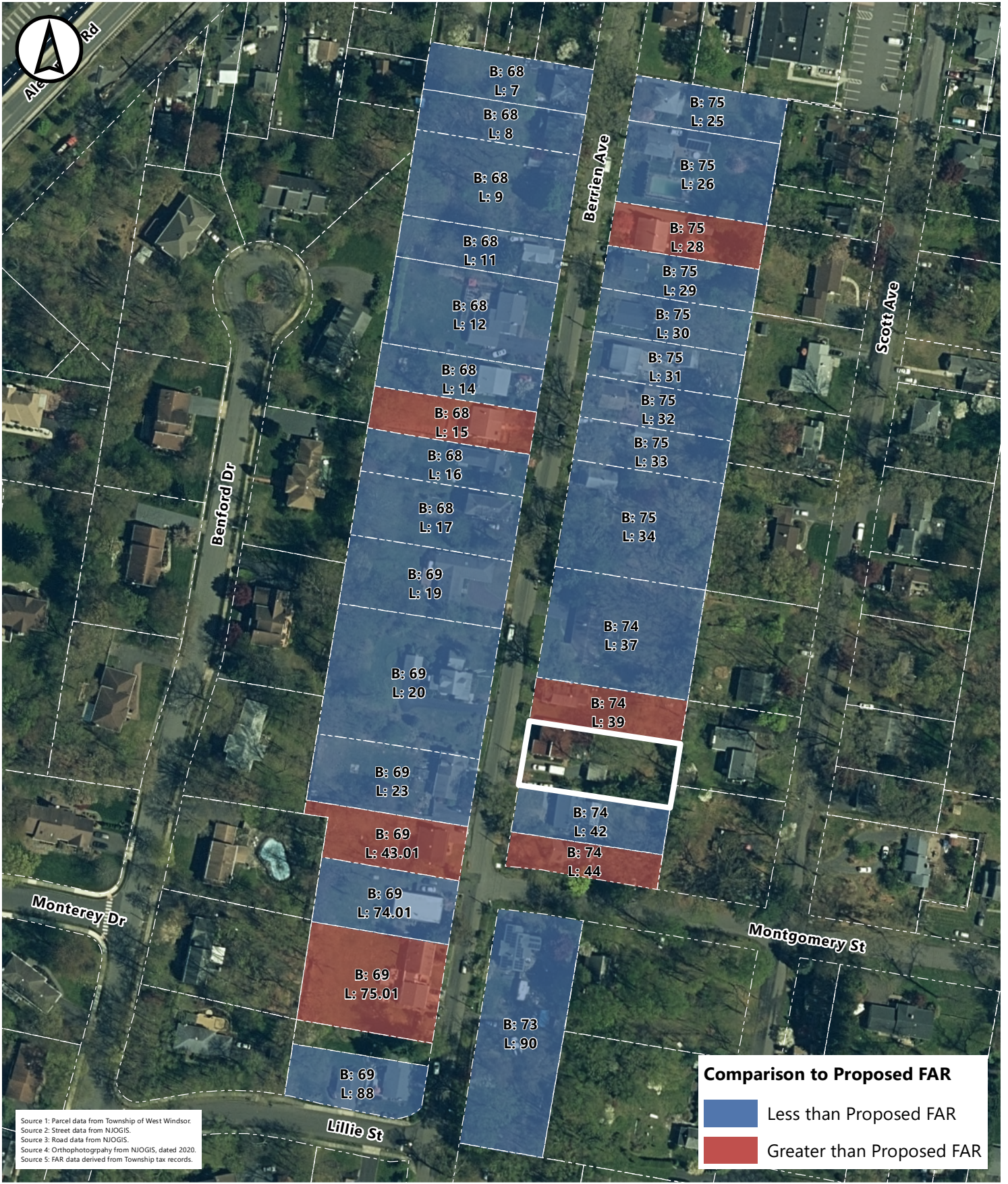


Source 1: Parcel data from Township of West Windsor.  
 Source 2: Street data from NJOGIS.  
 Source 3: Road data from NJOGIS.  
 Source 4: Orthophotography from NJOGIS, dated 2020.  
 Source 5: FAR data derived from Township tax records.

Dwg. Title	Project No.	Date	Drawn By
FAR Map 1: Comparison to R-1A FAR Requirement	3908.20	12.27.22	DN

<p><b>BURGIS ASSOCIATES, INC.</b>          COMMUNITY PLANNING   LAND DEVELOPMENT AND DESIGN   LANDSCAPE ARCHITECTURE          25 Westwood Avenue          Westwood, New Jersey 07675          p: 201.666.1811          f: 201.666.2599</p>	Project Title:	Scale:	Dwg. No.:
	29 Berrien Avenue Variance Application	1" = 150'	map 01

Township of West Windsor | Mercer County, New Jersey



Source 1: Parcel data from Township of West Windsor.  
 Source 2: Street data from NJGIS.  
 Source 3: Road data from NJGIS.  
 Source 4: Orthophotography from NJGIS, dated 2020.  
 Source 5: FAR data derived from Township tax records.

Dwg. Title  
**FAR Map 2: Comparison to Proposed FAR**

Project No.	Date	Drawn By
3908.20	06.27.23	DN