



MEMORANDUM

Clarke Caton Hintz

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To: Montgomery Township Zoning Board of Adjustment

From: Michael Sullivan, ASLA, AICP
James Clavelli, PP, AICP

**Re: Thomas Residence
Bulk Variance**
26 Blue Heron Way
Block 30001, Lot 16.13
R-5 Single Family Dwelling Detached

Date: February 5, 2024

1.0 Project & Site Description

1.1 Project Description: The applicant is seeking variance relief to construct an addition to a single-family detached dwelling. The proposal consists of a 72 sf. kitchen addition in the northwestern (rear) corner of the building. The exterior siding will match the siding on the rest of the dwelling. The increase in lot coverage is minimal, however, this is a “clean up” variance, which takes into account a number of prior improvements made to the property, all of which combined exceed the maximum permitted lot coverage by 12.2%.

1.2 Some Existing Development May Have Not Received Approval: On page 11 of the application under item 3.A, the applicant states “*The applicant proposed a 6’ x 12’ kitchen addition and then was notified by the Township Construction Department that the existing site conditions exceeded the maximum allowable impervious cover and therefore a variance is required. The owner has indicated they purchased the property in it’s existing condition which has existed without change for years.*” It is unclear at this time what approvals, if any, were obtained for the development of the accessory uses. These include a pool house, swimming pool, and children’s play equipment.

Historic aerials indicate that the lot was developed some time between 1995 and 2002 and was part of a large farm up to at least 1995. The Montgomery Township Zoning Map dated August 5, 1997¹ indicates that when the farmland was subdivided into single-family lots that it was located in the R-2 zone, which may

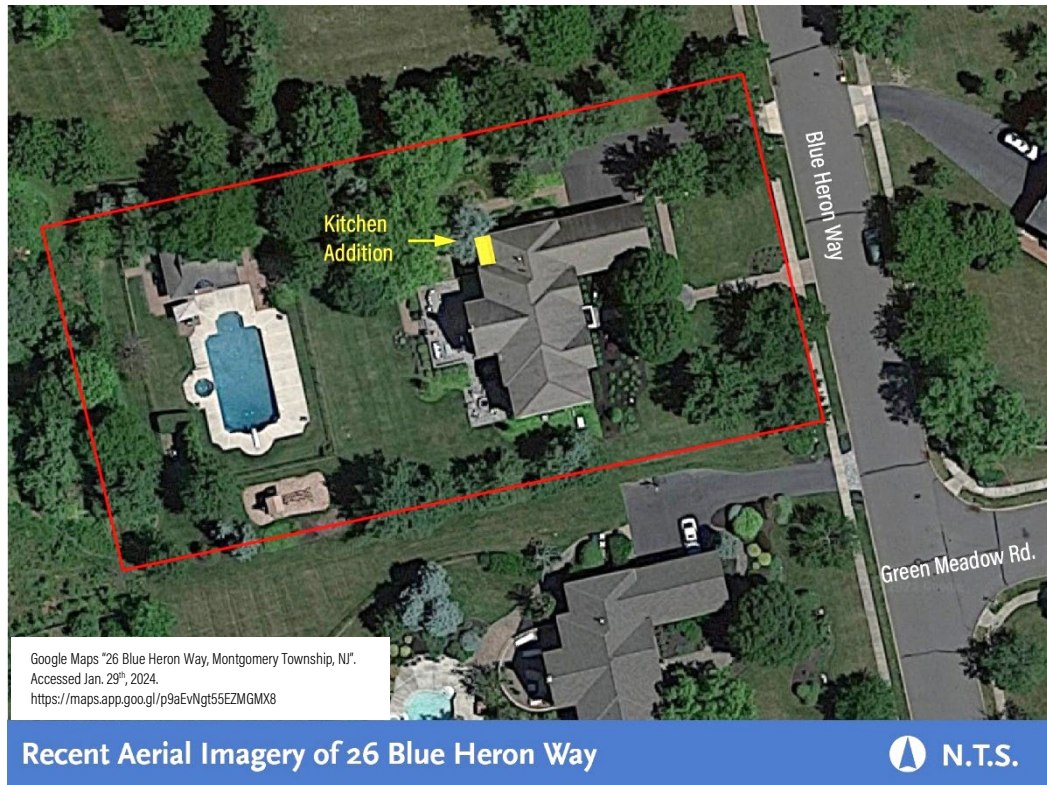
¹ *Township of Montgomery, Master Plan and Development Regulations Periodic Reexamination Report* dated April 1998. Page 31.

John Hatch, FAIA
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explain the manner in which the lot was developed. This office also notes that the 2001 Zoning Map² indicates that the site was located in the R-5 zone, indicating the zoning changed sometime between 1997 and 2001. **Understanding the date the dwelling was constructed, the zoning in place at the time of construction, and any subsequent approvals (if any) may be instructive to the Board's decision.**

All of the existing accessory uses are permitted in the zone. If the Board were to approve this application, the Board resolution would memorialize the conditions of the site and provide a legal record for the current and any future property owners of the development located on site. **This office recommends that the applicant provide testimony regarding the interior/use of the pool house if the use was not previously approved. Additional discussion regarding the pool house can be found in 2.2.**



² Accessed from <https://www.montgomerynj.gov/planning/page/2003-land-use-element-rocky-hill-node>.



Subject Property Located at 26 Blue Heron Way

- 1.3 **Site Description:** The property is one acre in size. Development on the site consists of a two-story dwelling and attached garage, driveway, pool and one-story pool house. Additional improvements include two slate patios in the rear, brick walks in the front and rear of the site, and a metal fence that surrounds the pool. Two 10-foot utility easements are located on site, one along the frontage, and the other along the rear property line. Concrete pads are located on either side of the dwelling, with HVAC equipment on the north side of the dwelling, and a generator and additional HVAC equipment on the south side. Playground equipment is located to the south of the pool, though it is not indicated on the plan or survey, nor is it included in the impervious coverage calculation.
- 1.4 **Neighborhood Context:** The site is bound by single-family detached dwellings of similar size and design. The neighborhood can best be described as a typical single-family residential subdivision. Most nearby lots are of a similar size excepting Lot 15.08 to the west which is approximately five acres in size.



- 1.5 **Relief Required:** A variance is required for exceeding maximum lot coverage. Two design exceptions are also required.

2.0 Use & Bulk Standards

- 2.1 **Principal Permitted Uses.** The application is in compliance. Pursuant to §16-4.a.2, the R-5 zone permits single-family detached dwelling units. The subject property contains an existing single-family detached dwelling. The applicant is not proposing any changes to the principal use.
- 2.2 **Accessory Permitted Uses.** The application is in compliance. Pursuant to §16-4.b.3, the R-5 zone permits recreational facilities customarily associated with detached single-family dwelling units. Specific examples are listed, one of which is a cabana. A cabana can be considered a synonym for pool house³, which is indicated on the plan (see comment 1.4 for further discussion). Other accessory uses located on the property include a swimming pool and children's play equipment, which would also fall under this category.



Pool House Located in Rear Yard

³ A Planner's Dictionary, Pg. 101, edited by Michael Davidson and Fay Dolnick, American Planning Association, April 1, 2004.



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- 2.3 Area & Yard Requirements.** Pursuant to §16-4.2d[5], “All lawfully existing detached single-family dwellings located in either the MR District or the R-5 District situated on lawfully existing lots having an area of at least 1 acre but less than 3 acres shall meet the requirements specified in this chapter for detached single-family dwellings in the R-1 District.” This office assumes that the lot is lawfully preexisting. The lot is one acre in size and as such, the R-1 standards apply. A variance is required for maximum permitted lot coverage.

Table 1. Lawfully Pre. Lots in the R-5 Zone 1 – 3 Acres in Size Pursuant to §16-4.2d[5]				
	Required	Existing	Proposed	Variance
Principal Building Minimums				
Max. Bldg. Height	35 ft.	< 35 ft.	No change	No
Min. Lot Area	One acre	One acre	No change	No
Min. Lot Frontage	150 ft.	150 ft.	No change	No
Min. Lot Width	150 ft.	150 ft.	No change	No
Min. Lot Depth	200 ft.	290.4	No change	No
Min. Front Yard	50 ft.	55 ft.	No change	No
Min. Side Yard (each)	30 ft. (each)	31/45	No change	No
Min. Rear Yard	50 ft.	157.2	No change	No
Accessory Building Minimums				
Distance to Side Line – Pool House	15 ft.	16 ft.	No change	No
Distance to Rear Line – Pool House	15 ft.	37.9 ft.	No change	No
Distance to Other Building – Pool House	20 ft.	100.4	No change	No
Distance to Other Building – Pool House	20 ft.	> 20 ft.	No change	No
Maximum Coverages				
Max. Lot Cover	19%*	27.2%	27.2%	Yes
Max. Principal Bldg. Cover	10%	7.8%	8.0%	No
Agg. Bldg. Coverage of accessory bldg(s)	3%	< 3%	No change	No
*An additional 4% lot coverage is permitted on a lot less than two acres in area for a private residential in-ground swimming pool, including all buildings, structures and equipment appurtenant thereto, provided that stormwater BMPs are constricted and maintained to the satisfaction of the Twp. Engineer.				

- 2.4 Maximum Lot Coverage: Variance relief is required.** Pursuant to §16-4.2d, the maximum permitted lot coverage is 15%. The site is permitted an additional 4%, totaling 19%, due to the inground swimming pool located on site, subject to the approval of the Township Engineer. The existing lot coverage is nonconforming at 27.2%. The plan indicates that the proposed addition will not significantly impact the lot coverage, as an existing balcony is located above the area of the proposed addition, and so the real increase in impervious coverage is limited to



±24 sf. The increase (which is still indicated as 27.2%) still requires variance relief. **A variance is required in either case.**

- 2.5 **Site Plan Corrections.** The note labeled as an asterisk on the plan indicates that a variance is required for aggregate accessory building coverage, however, this appears to be incorrect. Note (2) on the plan should be edited to refer to dwellings located in the R-5 District, rather than the R-2 District. Note (3) is not relevant to the application. **These items should be corrected.**

3.0 General Plan Comments

- 3.1 **Principal Building Addition.** §16-2.1 states that within the “accessory building, structure or use” definition that any development attached to a principal building:

...a building, structure or use which is customarily associated with and is subordinate and incidental to the principal building...Any accessory building attached to the principal building shall be considered part of the principal building. As such, the proposed addition is part of the principal building, not a separate accessory structure.



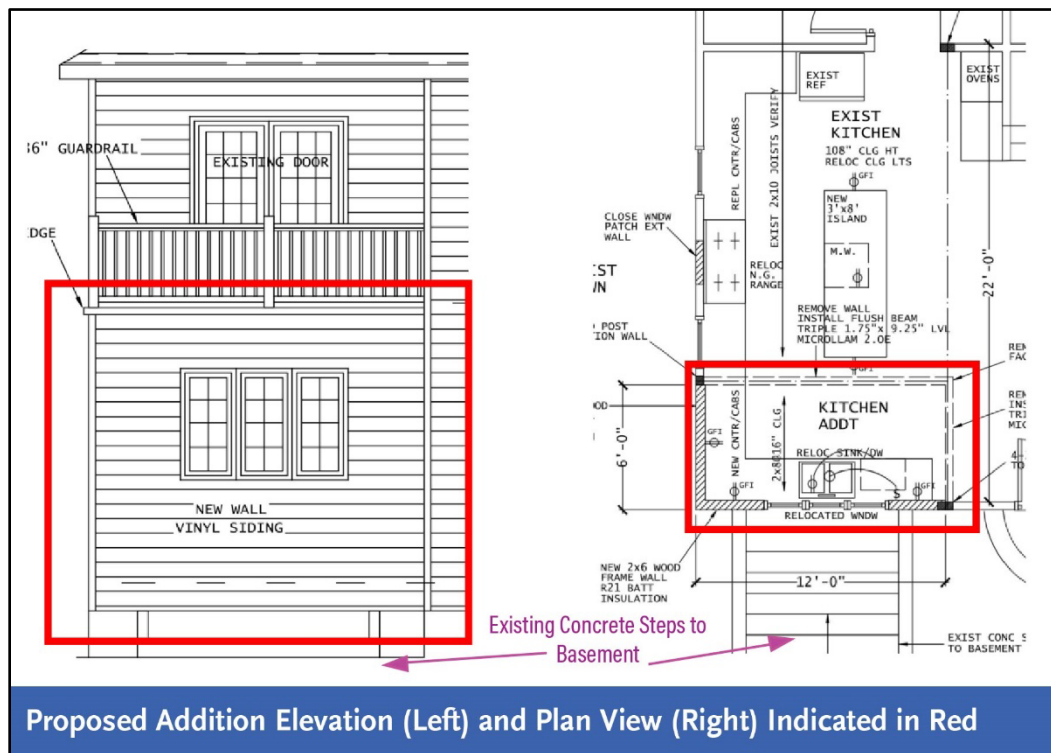


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- 3.2 **Description of Addition.** The plans indicate that the addition will extend six feet from the rear/northwestern corner of the building and will be 12 feet in width, though the addition will be flush with the existing building as this will essentially “fill” an existing alcove created by the second floor balcony and basement stairs. The exterior siding will match the existing siding. The roof of the addition will align with the second floor balcony and the floor with the basement steps.

The applicant should provide testimony regarding the basement access and how it may be impacted by the addition.



4.0 Miscellaneous

- 4.1 **Sidewalks.** The application is in compliance. §16-5.14c.1(d) requires “sidewalks shall be provided along all existing streets upon which all residential and nonresidential development abuts, unless specifically waived in certain locations by the reviewing



municipal agency based upon good cause shown by the applicant” Sidewalks currently exists along the frontage of the property on Blue Heron Way.

- 4.2 **Trees. A design exception is required.** §16-5.6d.3, a minimum of fourteen (14) trees per acre shall be planted on single-family residential lots. At exactly one acre, this lot requires a total of 14 trees to be planted on the site.

This section also states that “*where the applicant has demonstrated to the satisfaction of the Board that it is impractical or undesirable to provide the required number of trees then the Board may require tree planting in the disturbed area only, which trees shall be of a substantially larger caliper – e.g., five-inch caliper measured 12 inches from the ground – as appropriate for the tree type and species, based on consultation with the Township Landscape Architect.*” The plan indicates a limit of disturbance of 1,300 sf., which includes the addition, temporary soil stock pile location, and construction access. Based on the proposed limit of disturbance, one tree would be required if the Board grants a waiver to the applicant.

§16-5.6d.3(b) states that “*where the applicant has demonstrated to the satisfaction of the Board that the availability of areas for the planting of trees as required by this section is such that it is impractical or undesirable to provide the required number of trees ..., then the applicant shall install the remaining number of trees on public property within the Township, as directed by the Township Landscape Architect; or contribute sufficient funds to the Montgomery Township Tree Replacement Fund for the installation of the remaining number of required trees on public property....”*

The applicant is not proposing any trees at this time. **A design exception is required as no additional trees are proposed.**

- 4.3 **Soil Hauling. Compliance review is deferred to the Board Engineer.** §16-5.6.c requires that no soil shall be removed from or be imported to any site in excess of twenty (20) cubic yards per year without prior approval of the Board. For this purpose, a plan shall be submitted showing how the soil is to be distributed and stabilized including grading contours. If the soil is to be imported, a plan shall be submitted describing methodology and frequency of testing the soil to ensure its safe quality. The plan shall describe the size and number of vehicles that are proposed for hauling the removed or imported soil together with the hauling route. There is no information on the plan regarding the movement of soil. The applicant should provide testimony regarding the movement of soil, and if necessary, submit additional information to be reviewed by the Board Engineer.



5.0 Consideration of the “C” Variances

The following sections summarize the “c” 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” variances. The applicant must justify the “c” variances separately and each variance must satisfy both parts.

5.1 Consideration of the Positive Criteria. 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.

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 to purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

5.2 Consideration of the 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.

6.0 Consideration of the Design Exceptions

The proposal includes design exceptions. The Municipal Land Use Law at N.J.S.A. 40:55D-51.b discusses the criteria for the granting of exceptions. While the



burden of proof is lower than that of variances, the statute does provide a framework for decisions:

The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

7.0 Relevant Policy

7.1 **Master Plan Goals.** The Township Master Plan includes several goals which are relevant to the Board's consideration of this application. The following goals can be found on pages 6 through 8 of the 2017 Master Plan Reexamination Report:

2. *The identity of the Township as a totality and the integrity of individual neighborhood areas should be preserved, enhanced and created to the maximum extent possible.*
- 3.b *Applicable stormwater facilities and drainage basin and watershed plans, especially concerning the regional potable water supply, should be implemented in order to prevent adverse environmental impacts upon lands within the Township and upon surface and subsurface water resources; and*

The applicant should discuss the proposed addition and whether it preserves or enhances the integrity of the neighborhood (though this office notes that the addition should seamlessly blend with the existing building, and thus the exiting neighborhood).

The lot coverage is likely the greater concern regarding this proposal, though again this office notes that the change is minimal. This office defers to the Board Engineer as to whether any means of stormwater mitigation can be incorporated into the site if practicable.



8.0 Materials Reviewed

- 8.1 *Montgomery Township Planning & Zoning Board Application* and related documents, dated November 16, 2023.
- 8.2 *Variance Plan*, 1 sheet, prepared by Michael K. Ford, PE, dated July 20, 2023.
- 8.3 *Architecture Plan*, 1 sheet, by Kevin C. Roy, RA, dated Feb. 27, 2023.
- 8.4 *Plan of Survey for 26 Blue Heron way*, 1 sheet, prepared by Jeffrey T. Baldwin, PLS, PE, PP, JT Surveying, LLC, dated May 23, 2023.
- 8.5 *Somerset Union Soil Conservation District Request for Determination of Non-Applicability*, dated November 15, 2023.
- 8.6 *Somerset County Planning Board Application*, dated November 15, 2023.
- 8.7 *Delaware and Raritan Canal Commission Application*, dated November 15, 2023.

9.0 Applicant / Owner / Professionals

- 9.1 **Owner/Applicant:** George Thomas, 143 26 Blue Heron Way, Skillman, NJ 08558. Telephone: 201.725.1626 Email: George.thomas64@gmail.com.
- 9.2 **Attorney:** Lawrence P. Powers, Esq., Hoagland, Longo, Moran, Dunst & Doukas, LLP, 40 Paterson Street, New Brunswick, NJ 08903. Telephone: 732.545.4717.
- 9.3 **Architect:** Kevin C. Roy Architect, LLC, 458 Stagecoach Road, Millstone Township, NJ 08510. Telephone: 732.620.8642. Email: kroy@optimum.net.
- 9.4 **Engineer:** Michael K. Ford, PE, Van Cleef Engineering Associates, LLC, 32 Brower Lane, P.O. Box 5877, Hillsborough, NJ 08844. Telephone: 908.359.8291. Email: mford@vancleefengineering.com.

10.0 Summary

- 10.1 The applicant seeks a variance to exceed maximum permitted lot coverage. Design exceptions are required for tree requirements.



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- a) Variances
§16-4.2d Maximum Lot Coverage
- b) Design Exceptions
§16-5.6d.3 Trees
§16-5.6d.15 Street Trees

Please contact this office with any questions you may have.

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