



MEMORANDUM

Clarke Caton Hintz

Architecture
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To: Montgomery Township Zoning Board of Adjustment

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

Re: **Michael and Jeanine Reilly Residence**
Floor Area Ratio Variance
17 Augusta Court
Block 30002, Lot 73
R-5 Single Family Dwelling Detached
Optional Development Alternative – Single-Family Residential Cluster 1

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 addition consists of a 253 sf. covered porch. The proposal exceeds the maximum permitted floor area ratio (FAR), requiring a variance pursuant to *N.J.S.A. 40:55D-70.d(4)*. The applicant also seeks relief for exceeding the maximum permitted building coverage.

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



Existing Dwelling at 17 Augusta Court



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- 1.2 **Site Description:** The subject property, approximately 0.43 acre (18,630 sf.), is located in a Type 1 single-family residential cluster within the R-5 District. Existing development consists of a two-and-one-half story, single-family detached dwelling with an attached garage, and a driveway. Additional improvements consist of a curved, decorative short wall in the rear yard and a brick patio. There is attractive landscaping around the property and outdoor furniture typical of a suburban, single-family dwelling located in the rear yard. The lot features an undersized lot frontage and lot width, both of which are preexisting conditions. The lot is irregularly shaped with curved frontage along Augusta Court.
- 1.3 **Neighborhood Context:** The site is bound by other single-family detached dwellings of comparable size and design, as the dwelling is part of a planned development. The exception is the rear lot line which abuts Lot 1, an open space parcel with a walking path. The neighborhood is a typical single-family residential subdivision that is located in proximity to the Cherry Valley Country Club, associated golf course, and other recreational elements.
- 1.4 **Relief Required:** In addition to requiring relief for floor area ratio, a variance will be required for exceeding the maximum permitted lot coverage.

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2.0 Use & Bulk Standards

- 2.1 Principal Permitted Uses.** The application is in compliance. Residential Cluster 1, an optional development alternative, pursuant to §16-6.5.b.1(b), 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. Residential cluster 1, pursuant to §16-6.5.b.3(c), permits recreational facilities customarily associated with a single-family detached dwelling. The outdoor furniture found on site is all permitted as it is typical of a single-family detached dwelling.
- 2.3 Area & Yard Requirements.** Variances are required for exceeding maximum FAR and maximum lot coverage. Two preexisting nonconformities for lot frontage and lot width are also present. See Table 1 for additional details on the applicant’s compliance with the area and yard requirements.

Table 1: Optional Development Alternative: Residential Cluster 1 Developed Prior to 1991. §16-6.5.b.5 and Footnote 7				
	Required	Existing	Proposed	Variance
Lot Area				
Minimum Lot Area	14,500 sf.	18,630 sf.	No change	No
Maximum Lot Area	33,000 sf.	18,630 sf.	No change	No
Principal Building Minimums				
Min. Lot Frontage	100 ft.	75.05 ft.	No change	Ex.
Min. Lot Width(*)	100 ft.	92.31 ft.	No change	Ex.
Min. Lot Depth	125 ft.	164.85 ft.	No change	No
Min. Front Yard	40 ft.	43.66 ft.	No change	No
Min. Side Yard (each)	20 ft.	20.65 ft.	No change	No
Min. Rear Yard	30 ft.	39	No change	No
Maximum Coverages				
Max. Lot Coverage	25%	19.6%	22.6%	No
Max. Principal Bldg. Cover	15%	14.92%	16.28%	Yes
Max. Floor Area Ratio	20%	21.4%	22.7%	Yes
Agg. Bldg. Coverage of accessory bldg.(s)	3%	N/A	N/A	No
Notes:				
Ex. - Preexisting condition				
* - The minimum frontage shall not be less than 75% of the minimum lot width if frontage is curved.				



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- 2.4 **Minimum Lot Frontage: *Variance relief may be required.*** Pursuant to §16-6.5.b.5 the minimum required lot frontage is 100 ft. The lot frontage is 75.05 ft. This is likely a preexisting condition from the time of the original subdivision. **If relief had not previously been granted for this condition, the applicant may wish to seek variance relief at this time.**
- 2.5 **Minimum Lot Width: *Variance relief may be required.*** Pursuant to §16-6.5.b.5 the minimum required lot width is 100 ft. The lot width is 92.31 ft. This is likely a preexisting condition from the time of the original subdivision. **If relief had not previously been granted for this condition, the applicant may wish to seek variance relief at this time.**
- 2.6 **Maximum Principal Building Coverage: *Variance relief is required.*** Pursuant to §16-6.5.b.5(7) the maximum permitted principal building coverage is 15%. The existing principal building coverage is 14.92% and the proposed is 16.28%. **A variance is required.**
- 2.7 **Maximum Floor Area Ratio (FAR): *Variance relief is required.*** Pursuant to §16-6.5.b.5(7) the maximum permitted FAR is 20%. The existing FAR is 21.4% and the proposed FAR is 22.7%. **A variance is required pursuant to N.J.S.A. 40:55D-70.d(4).**

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.

- 3.2 **Description of Addition.** The plans indicate that the addition will extend from the rear of the building, starting at the northwestern corner of the home and fanning out in a semicircular manner around the rear family room, encompassing approximately 60% of the rear wall on the ground floor. At its widest point it will extend 10 feet from the existing dwelling and will extend six feet and one inch backwards from the rear of the dwelling, with its total depth being 16 feet. Due to



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the configuration of the rear of the dwelling the porch itself is never deeper than eight feet. Stone steps will lead to the covered porch from the rear yard, which will be open to the yard with a roof extending from the dwelling and supported by columns. Entry into the dwelling will occur through the two existing rear entrances, which are sliding glass paneled doors. The plans indicate that portions of the rear of the building are composed of stucco and will be replaced by horizontal siding.

An image of the rear of the building as it exists is provided below. The following page contains images of the proposed rear yard in plan view, and the elevation provided by the applicant.

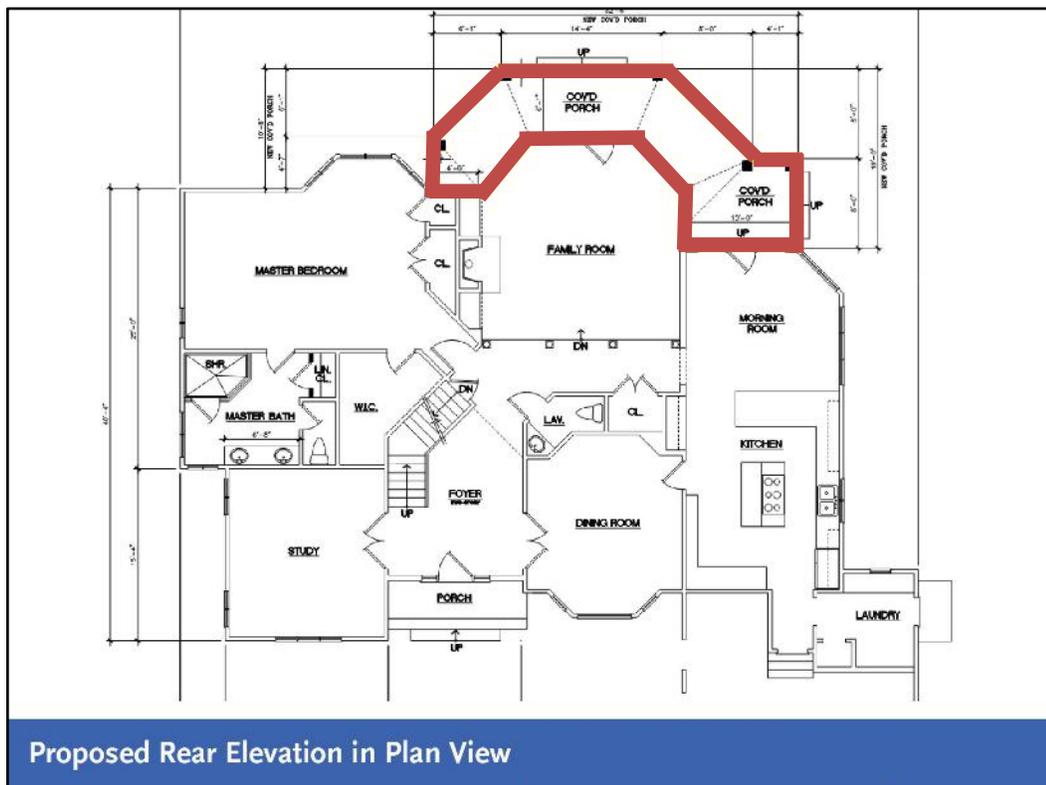


Rear of Existing Dwelling at 17 Augusta Court



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The plans do not include a color rendering or elevation. Such an exhibit may be useful for the Board during the hearing in determining the appropriateness of the proposed addition within the existing neighborhood context.

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 Augusta Court.

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 23,318 sf., this lot requires a total of 6 (0.42 x 14 = 5.8) 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 proposed limit of disturbance is 660 sf., which would necessitate one tree be planted if this waiver is granted by the Board.

§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*



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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.

4.4 Affordable Housing Development Fee. The applicant may be subject to a residential development fee towards the municipalities affordable housing trust fund. If this is applicable, payment of the fee should be required as a condition of any approval.

5.0 Consideration of the “D(4)” Floor Area Ratio Variance

5.1 Consideration of the Floor Area Ratio (FAR) Variance (NJS 40:55D-7od(4): FAR is a tool to limit the intensity of use, by controlling mass and scale of buildings. When considering a variance for excessive FAR, the applicant is required to satisfy a lower threshold of special reasons than for a use variance, however must ensure that the degree of the proposed deviation will still satisfy the negative criteria.

5.2 The Positive Criteria: Under the Coventry standard, the applicant need not show that the site is particularly suited for more intensive development, but rather, that the site will accommodate the problems associated with the larger floor area than permitted by the ordinance.

5.3 Negative Criteria: As always, the granting of the variance must be able to 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. The Court clearly explained in Price, how an applicant might establish the negative criteria for a variance, reinforcing that “only minimally greater” than permitted or “a minimal increase” could satisfy the negative criteria, but that variances that amounted to a tripling of the standard were not appropriate.

6.0 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



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

6.1 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.

6.2 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.

7.0 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



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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.*

10. *The Development Plan should safeguard and promote the preservation of farmland, open space and woodlands areas within Montgomery Township, and such areas should be set aside whenever possible for conservation and/or recreational purposes.*

The applicant should discuss the proposed addition and whether it preserves or enhances the integrity of the area. The following image shows the rear of the neighboring dwellings to the north and south (admittedly, the photograph of the rear of the northern property is less than ideal). The applicant should discuss the scale of the proposed development relative to the scale of neighboring dwellings.

Additionally, the rear of the property abuts a paved sidewalk/walking trail. This office notes that the applicant is not violating any setbacks, however, the Board may wish to understand the impact, if any, the proposed addition may have regarding the public walking path.



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8.0 Materials Reviewed

- 8.1 *Montgomery Township Planning & Zoning Board Application* and related documents, dated June 25, 2023.
- 8.2 *Architectural Plans*, 3 sheets, prepared by Denise E. Lempotesis-Vokolos, AIA, dated June 24, 2020.
- 8.3 *Variance Plan*, 1 sheet, prepared by Michael Ford, PE, PP, Van Cleef Engineering Associates, dated July 14, 2021.
- 8.4 *Plan of Survey for 17 Augusta Court*, 1 sheet, prepared by Ezra Golub, PLS, PE, Louis Lehman, PA, dated July 21, 2009.
- 8.5 *Somerset Union Soil Conservation District Request for Determination of Non-Applicability*, dated October 25, 2023.
- 8.6 *Somerset County Planning Board Application*, dated October 25, 2023.
- 8.7 *Delaware and Raritan Canal Commission Application*, dated October 25, 2023.

9.0 Applicant / Owner / Professionals

- 9.1 **Owner/Applicant:** Michael and Jeanine Reilly, 17 Augusta Court, Skillman, NJ 08558. Telephone: 732.690.1452 Email: hillsboroughfh@aol.com.
- 9.2 **Attorney:** Richard Schatzman, Esq., Schatzman Baker, P.C., 215-216 Commons Way, Princeton, NJ, 08540. Telephone: 609.924.1199. Fax: 609.683.5251.
- 9.3 **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.
- 9.4 **Architect.** Denise E. Lempotesis-Vokolos, AIA, 344 Nassau Street, Princeton, NJ 08540. Telephone: 609.924.3535.



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10.0 Summary

10.1 The applicant is seeking a floor area ratio variance pursuant to *N.J.S.A. 40:55D-70.d(4)*, and a maximum principal building coverage variance to construct a rear addition/covered porch to the rear of an existing single-family dwelling on Augusta court. Design exceptions are required for tree planting.

- a) Variances
 - §16-6.5.b.5 Maximum Floor Area Ratio
 - §16-6.5.b.5 Maximum Principal Building Coverage
 - §16-6.5.b.5 Minimum Lot Frontage*
 - §16-6.5.b.5 Minimum Lot Width*
 - *Denotes preexisting condition.*

- b) Design Exceptions
 - §16-5.6d.3 Trees

Please contact this office with any questions you may have.

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