



## MEMORANDUM

Clarke Caton Hintz

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**To:** Montgomery Township Planning Board

**From:** Michael Sullivan, ASLA, AICP  
Emily Goldman, PP, AICP

*MS*  
*Emily Goldman*

**Re:** **Caivano Residence**  
**Minor Subdivision and Bulk Variances**  
243 & 257 Hollow Road  
Block 12001, Lots 14 & 16  
R-5 Residential Zone

**Date:** April 19, 2021

### 1.0 Project & Site Description

**1.1** The applicant is seeking approval for a minor subdivision with bulk variances on block 12001, lots 14 and 16 located on the corner of Hollow Road and Camp Meeting Avenue. The applicant is also proposing to construct a new septic system and septic field. No new lots are proposed.

**1.2** The properties are located in the R-5 Single-Family Residential zoning district. Lot 14, a 0.273-acre property, contains an existing single-family dwelling, along with a paved area, stone driveway, porch, deck, stone walk, slate walk, shed, and other related improvements. Lot 16, a 3.727-acre property, is vacant. Portions of both properties contain a portion of the Rock Brook. The site is surrounded by single family residences and woodlands.

**1.3** The Township operated a landfill on the subject property under a written agreement executed on July 6, 1964. It is believed the Township closed the landfill in 1973 or 1974. A February 10, 1995 letter from the applicant to the Township Tax Assessor indicates that 90% of lot 16 was used for the landfill; however, the limit of the formal landfill operations is unclear.

**1.4** As per §16-4.2d, the applicant requires relief from the minimum requirements of the R-5 district, including lot area, lot depth, accessory structure distance to side line and accessory structure distance to rear line. The applicant also requires relief for substandard pre-existing conditions, per §16-4.2d, for lot frontage, lot

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width, front yard setback, side yard setback, rear yard setback, and setback to a critical area.

### 2.0 Lot Configuration

**2.1 Survey. *Additional information is required.*** The applicant should identify any new information discovered that informed revisions to the *Location Survey* between June 1, 2020 and March 9, 2021 and that led to the lot configuration of the subject project. The title “*Location Survey*” is misleading in that it includes the proposed lot lines that would result from the subdivision. Typically, a survey identifies existing conditions only. As the minor subdivision has not been approved, the proposed lot line should be removed from the *Location Survey* and the existing lot lines between lots 14 and 16 should be clearly depicted on the survey.

**2.2 Merged Lot.** The following analysis is intended to inform the Planning Board in the consideration of whether or not the two undersized lots have been, effectively, merged. Although the merger doctrine as first spelled out in *Loechner v. Campoli*, 231 A. 2d 553 - NJ: Supreme Court 1967, was started in broad terms, seemingly applying to all lots that were held in common ownership, subsequent decisions and legislation have had the effect of limiting the doctrine of merger, generally, to contiguous undersized lots fronting on the same street. In *Jock v. Zoning Bd. of Adjustment*, 878 A. 2d 785 - NJ: Supreme Court 2005, “*the Court made it clear that the Loechner merger doctrine applies only to lots held in common legal title and that equitable or constructive ownership will not suffice for Loechner merger purposes.*”

In this instance, both lots 14 and 16 are contiguous, undersized lots, fronting on Hollow Road and held in common legal title by the applicant and taxed together as one tract. Moreover, since improvements, including the driveway and shed, for the dwelling on lot 14 are located on lot 16, the applicant, through the use of those structures, essentially obliterated the division between the lots, creating a single parcel that could not be later developed as two lots without violating the self-created hardship rule. Therefore, it would not be unreasonable to consider the lots as having been merged.

However, in *Jock v. Zoning Bd. of Adjustment*, 878 A. 2d 785 - NJ: Supreme Court 2005, the Court also found that there are a number of recognized exceptions to the merger doctrine and “*given that the purpose of the merger doctrine is to bring non-conforming lots into conformity and thus advance the zoning scheme, those exceptions*



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*for cases where the property is already conforming or where it cannot be rendered conforming make sense.” In this instance, even if lots 14 and 16 were merged, they would still constitute a non-conforming lot.*

Additional aspects of this matter and their relationship to the public welfare, should be considered during the question of merger. One rationale for the subdivision relates to the need to construct a new subsurface septic disposal system to serve the home on lot 14. The existing septic system is the original system serving the existing house. While it is not currently failing, the applicant intends on selling the property, which she will be unable to do without replacing the septic system, as the original system would most likely fail a resale inspection. A new septic system is required to be on the same lot as the dwelling and there is insufficient land on lot 14 to replace the existing system compliant with today’s standards. As such, the applicant is proposing the minor subdivision to increase the size of lot 14 to provide for the additional land necessary to construct a new septic system. The removal of the existing, original septic system and the installation of a new septic system should be a benefit to the public health, safety and welfare, as it would ensure on-site disposal of effluent met current standards to protect the quality of groundwater and nearby surface waters from the hazardous effects related to nitrates.

An additional component of the rationale for the subdivision relates to the presence of the former landfill. An argument could be made that the presence of the former landfill has made it so that lot 16 is not a buildable lot; thus reducing the potential for increasing the effective density of this parcel, above that as envisioned by the master plan and zoning ordinance (one (1) dwelling per five (5) acres). Furthermore, given the location of the former landfill, it is not clear that the historical uses of the lots suggest a merger has occurred – a landfill and a home are not typically found together as complementary uses. From a practical perspective, maintaining the legal separation between the former landfill and the residential portion of this tract should be weighed in terms of future use of both lots.

As such, when considering the application of the merger doctrine, the Board should balance the benefits to the public versus the practical complications emanating from the presence of the former landfill.

- 2.3 **Side Lot Lines.** *Additional information is required.* §16-5.5 states “insofar as practical, side lot lines shall be either at right angles or radial to street lines.” The applicant is proposing to create two irregularly-shaped lots. Existing lot 14 does



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not comply with a majority of the area and yard requirements and the amount of relief needed is either being reduced or eliminated through the proposed minor subdivision. However, the Planning Board may wish to consider granting variance relief for some of the area and yard requirements if the proposed minor subdivision results in two regularly-shaped lots.

The *Septic System Design Plan*, last revised March 23, 2020, identifies a potential lot line that results in two regularly-shaped lots. A subsequent *Septic System Design Plan*, last revised November 20, 2020<sup>1</sup>, was submitted with the *Minor Subdivision – Lot Line Adjustment Plan* that identifies the irregularly-shaped lots. A suggested configuration of the two lots is provided herein that would result in two regularly-shaped lots, which is more in line with the *Septic System Design Plan*, last revised March 23, 2020.



<sup>1</sup> The revision block still has a last revision date of March 23, 2020; however, the file path has a date of November 20, 2020



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At the March 2, 2021 Site Plan Subdivision Committee meeting, the applicant indicated that the proposed lot line was configured to ensure that no elements/portions of the former landfill would be located within proposed lot 14. The applicant advised the committee that they would submit information to identify the presence of the former landfill on the area adjacent to the Rock Brook to justify the proposed irregularly shaped lot configuration. To date, no information related to extent of the former landfill has been provided to justify the proposed irregular lot configuration. The applicant should provide the requested information to justify the proposed irregular lot lines. Without additional information justifying the proposed irregular lot lines, the Board may wish to consider requiring a more regularly-shaped lot line adjustment. Alternatively, without the documentation to justify the extent of the former landfill, the area formerly used as landfill could be partially located on lot 14. As such, the Board may wish to require a deed notice of the former landfill use on both of the proposed lots so the record for a future owner clearly reflects that.

- 2.4 **Lot Frontage.** The application is in compliance. The lots have frontage along Hollow Road and Camp Meeting Road.
- 2.5 **Lot Suitability.** The application is in compliance. §16-5.5c states “*all lots shall be suitable for the purpose(s) of their intended use.*” The applicant is proposing a minor subdivision/lot line adjustment between two existing lots. The uses on the reconfigured lots is not proposed to change. Lot 14 will continue to contain a single-family detached dwelling and lot 16 will continue to be a vacant lot.
- 2.6 **Monuments. Condition of Approval.** §16-5.5d states “*concrete monuments shall be installed in accordance with the requirements of the New Jersey Map Filing Act. In any case, all lot corners shall be marked with metal allow pins.*” At the March 2, 2021 Site Plan Subdivision Committee meeting, the applicant indicated iron pins will be set at the corners pursuant to the map filing law. However, the *Minor Subdivision – Lot Line Adjustment Plan* still does not identify any monuments or pins at the proposed corners of the new lot line. The applicant shall provide testimony as to if monuments or pins will be set at the corners. The applicant shall also be required to revise the *Minor Subdivision – Lot Line Adjustment Plan* to identify the proposed monument.



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### 3.0 Use & Bulk Standards

- 3.1 Permitted Principal Uses.** The application is in compliance. The R-5 district, pursuant to §16-4.2a, permits detached dwelling units. Lot 14 contains an existing single-family detached dwelling. Lot 16 is vacant. The applicant is not proposing changes to the use of either lot.
- 3.2 Permitted Accessory Uses.** The application is in compliance. The R-5 district, pursuant to §16-4.2b, permits a number of accessory uses including but not limited to, one private residential storage shed not exceeding 15 feet in height and 0.35% lot coverage, provided that in no case shall such a shed have a lot coverage of more than 400 square feet; off-street parking and private garages; and, fences and walls. The property contains a shed, retaining walls, and an existing fence. No changes are proposed.
- 3.3 Area & Yard Requirements.** *Variance relief is necessary.* The applicant does not meet nine (9) of the area and yard requirements; five (5) of which are pre-existing conditions. See Table 1 for additional details on the applicant's compliance with the area and yard requirements.

Table 1 - §16-4.2d R-5 Residential District Area and Yard Requirements						
	R-5	Lot 14		Lot 16		Variance ?
	Standards	Existing	Proposed	Existing	Proposed	
<b>Min. Lot Area</b>	<b>5 ac.</b>	<b>0.273 ac.</b>	<b>1.057 ac.</b>	<b>3.727 ac</b>	<b>2.730 ac.</b>	<b>Yes</b>
<b>Min. Lot Frontage</b>	300 ft.	74.79 ft.	324.86 ft.	667.39 ft. (H) <b>292.07 ft. (C)</b>	399.32 ft. (H) <b>292.07 ft. (C)</b>	<b>Yes*</b>
<b>Min. Lot Width</b>	300 ft.	73.90 ft.	348.5 ft.	721.7 ft. (H) <b>285.5 ft. (C)</b>	447.1 ft. (H) <b>285.5 ft. (C)</b>	<b>Yes*</b>
<b>Min. Lot Depth</b>	<b>500 ft.</b>	<b>161.1 ft.</b>	<b>212.2 ft.</b>	<b>116.8 ft.</b>	<b>212.2 ft.</b>	<b>Yes</b>
<b>Principal Use</b>						
<b>Min. Front Yard Setback</b>	<b>75 ft.</b>	<b>24.3 ft.</b>	<b>24.3 ft.</b>	N/A	N/A	<b>Yes*</b>
<b>Min. Side Yard Setback</b>	<b>75 ft.</b>	<b>23.8 ft.</b>	<b>23.8 ft.</b>	N/A	N/A	<b>Yes*</b>
<b>Min. Rear Yard Setback</b>	<b>100 ft.</b>	<b>83.7 ft.</b>	<b>83.7 ft.</b>	N/A	N/A	<b>Yes*</b>
Max. Lot Coverage	15%	19.2%	12.1%	2.1%	1.1%	No
Max. Building Coverage	8%	12.2%	2.6%	N/A	N/A	No
<b>Accessory Buildings</b>						
<b>Distance to Side Line</b>	<b>50 ft.</b>	<b>-5.16 ft.</b>	<b>20.2 ft.</b>	0 ft.	N/A	<b>Yes</b>
<b>Distance to Rear Line</b>	<b>50 ft.</b>	<b>36.16 ft.</b>	<b>35.8 ft.</b>	35.8 ft.	N/A	<b>Yes</b>



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Distance to Other Building	20 ft.	44.9 ft.	44.9 ft.	N/A	N/A	No
Max. Building Coverage	2%	0.7%	0.2%	0.03%	N/A	No
* Denotes a pre-existing condition						

- 3.4 **Lot Area. Variance relief is required.** §16-4.2d requires a minimum lot area of 5 acres for a property within the R-5 district. Lot 14 is 0.273 acres. The applicant is proposing to increase lot 14 to 1.057 acres. Lot 16 is 3.514 acres and is proposed to be reduced to 2.730 acres. The Planning Board may wish to consider a different reconfiguration of the lot line adjustment so long as proposed lot 14 is still at least 1.0-acre in size.
- 3.5 **Lot Frontage. Variance relief is required.** The existing lot frontage for lot 16 along Camp Meeting Road does not comply with the R-5 standards. The applicant is not proposing to change this condition. Additionally, the Planning Board may wish to permit lot 14 to have a lot frontage of less than 300 feet if the lot is reconfigured into a regularly-shaped lot.
- 3.6 **Lot Width. Variance relief is required.** The existing lot width for lot 16 along Camp Meeting Road does not comply with the R-5 standards. The applicant is not proposing to change this condition.
- 3.7 **Lot Depth. Variance relief is required.** The existing lots do not comply with the lot depth requirements. Proposed lot 14 will result in even less lot depth increasing the relief needed. Proposed lot 16 will result in an increase in lot depth; however, it still will not comply with the standards. Thus, even though relief needed will be reduced, the applicant still requires variance relief for the lot depth on proposed lot 16.
- 3.8 **Front Yard Setback. Variance relief is required.** The existing dwelling is setback 24.3 feet from Hollow Road whereas 75 feet is required. The applicant is not proposing to change this condition.
- 3.9 **Side Yard Setback. Variance relief is required.** The existing dwelling is setback 23.8 feet from the northerly side lot line whereas 75 feet is required. The applicant is not proposing to change this condition.



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- 3.10 **Rear Yard Setback. *Variance relief is required.*** The existing dwelling is setback 83.7 feet from the rear lot line whereas 100 feet is required. The applicant is not proposing to change this condition.
- 3.11 **Accessory Building Minimum Distance to Side Line. *Variance relief is required.*** The existing shed straddles the lot line between lots 14 and 16. The proposed subdivision will result in the shed setback 20.1 feet from the proposed side lot line. However, if the Planning Board considers the reconfiguration of lot 14 into a regularly-shaped lot, variance relief for accessory building minimum distance to a side line may no longer be necessary.
- 3.12 **Accessory Building Minimum Distance to Rear Line. *Variance relief is required.*** The existing shed straddles the lot line between lot 14 and 16 and is setback approximately 36.16 feet from the rear lot line. The proposed minor subdivision/lot line adjustment would increase the shed's setback from the rear lot line to 37.1 feet.
- 3.13 **Setback to a Critical Area. *Variance relief is required.*** §16-4.1e states “a twenty-foot setback shall be provided between the foundation of any building and any ‘critical areas’, conservation easement areas and/or conservation deed restricted areas, whether existing or required.” The existing dwelling is partially located within the Montgomery Township Stream Corridor and the flood hazard area. The applicant is not proposing to change this condition.
- 3.14 **Right-of-Way Dedication. *Additional information is required.*** The *Minor Subdivision – Lot Line Adjustment Plan* shows that the western property boundary encroaches into the cartway of Hollow Road. At the March 2, 2021 Site Plan Subdivision Committee meeting, the applicant indicated they would dedicate right-of-way; however, the revised *Minor Subdivision – Lot Line Adjustment Plan* does not identify a right-of-way dedication. The applicant should provide confirmation that no additional right-of-way dedication is warranted. Alternatively, the plans should be revised to indicate any proposed right-of-way dedication and commensurate reductions in lot areas/configurations. If this is the case, a new assessment of the conformity with the zoning requirements should be undertaken to ascertain the exact nature and extent of relief.



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### 4.0 Landscape Design & Plantings

The following includes a review of basic dimensional and quantitative regulations; however, the technical review of plantings is deferred to the Board Landscape Architect.

- 4.1 **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. With lot 14 proposed at 1.0 acres, this section requires a total of 14 ( $1.0 \times 14 = 14$ ) 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 applicant has identified the limit of disturbance as 0.055 acres (2,400 square feet). If the Board grants a waiver for tree plantings for the disturbance area only, a minimum of one (1) tree would be required ( $0.055 \times 14 = 0.77$ ). At the March 2, 2021 Site Plan Subdivision Committee, the applicant indicated they would be willing to plant one (1) tree; however, the *Minor Subdivision – Lot Line Adjustment Plan* does not identify any proposed landscaping.


§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....*”

- 4.2 **Conservation Easement. Additional information is required.** §16-5.6.e indicates a conservation easement or conservation deed restriction shall be provided, if required by the Board, for treed areas outside of the “limit of disturbance” when such areas have been credited towards the granting of a design waiver from the total shade tree requirement in §16-6.5d.3 as discussed above. The Site Plan Subdivision Committee should determine if a conservation easement or conservation restriction is required.



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- 4.3 **Street Trees.** *A design exception is required.* §16-5.6d.15 requires street trees at 50 foot intervals. With 822.19 feet of frontage along Hollow Road and 267.2 feet of front along Camp Meeting Avenue, the applicant is required to have 16 street trees along Hollow Road ( $822.19 \text{ feet} / 50 \text{ feet} = 16.44 \text{ trees}$ ) and 5 street trees along Camp Meeting Avenue ( $267.2 \text{ feet} / 50 \text{ feet} = 5.34 \text{ trees}$ ). There are stretches of trees along Hollow Road, but the corner and the vicinity of Hollow Road near the existing dwelling are devoid of street trees. There are currently no street trees along Camp Meeting Avenue. The applicant is not proposing any additional street trees.
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- Existing vegetation along Hollow Road
- 4.4 **Sidewalks.** *A design exception is required.* §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 do not currently exist along Hollow Road nor is the applicant proposing any sidewalks. A sidewalk along Camp Meeting Avenue is indicated on the Pedestrian-Bikeway Corridor Plan and the Township is actively engaged in constructing pathways in the vicinity. This office defers to the Township Engineer on whether a right-of-way dedication is needed on Camp Meeting Avenue to accommodate a future sidewalk in this location.
- 5.0 **Stream Corridor**
- 5.1 **Permitted Uses.** The application is in compliance. §16-6.4d.6 permits the “installation, repairs or replacement of sanitary sewers and appurtenances, and other utility lines and appurtenances” within the flood hazard area and stream corridor. The applicant is proposing to construct a septic system and septic field within the stream corridor.



## 6.o Consideration of the 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.

**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.



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### 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:

1. *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.*

As the neighborhood is predominantly residential, the existing single-family detached dwelling enhances the single family pattern of development that exists in this area of the Township.

2. *The Development Plan should recognize the physical characteristics of the Township and acknowledge the inherent capabilities and limitations of the land to host different types of community development at appropriate densities and intensities.*

The proposed minor subdivision/lot line adjustment will reduce the variance relief needed for many of the existing conditions on lot 14.

### 8.0 Materials Reviewed

8.1 *Montgomery Township Planning & Zoning Board Application* and related documents, dated September 17, 2020.

8.2 *Minor Subdivision – Lot Line Adjustment Plan*, 1 sheet, prepared by Van Cleef Engineering Associates, LLC, dated July 30, 2020, last revised March 25, 2021.

8.3 *Septic System Design*, 1 sheet, prepared by Van Cleef Engineering Associates, LLC, dated March 17, 2020, last revised November 20, 2020.

8.4 *Septic System Design*, 1 sheet, prepared by Van Cleef Engineering Associates, LLC, dated March 17, 2020, last revised March 23, 2020.

8.5 *Location Survey*, 1 sheet, prepared by Van Cleef Engineering Associates, LLC, dated June 1, 2020, last revised March 9, 2021.



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8.6 *Somerset County Planning Board application, dated September 21, 2020.*

### 9.0 Applicant / Owner / Professionals

9.1 **Owner/Applicant:** Wayne L. & Betsy Caivano, Skillman, NJ 08558. Telephone: 609.466.3879. Email: blcaivano@gmail.com.

9.2 **Attorney:** Michael Fedun, Esq. c/o Singer & Fedun, LLC, 2230 Route 206, P.O. Box 134, Belle Mead, New Jersey 08502. Telephone: 908.359.7873. Facsimile: 908.359.0128

9.3 **Engineer:** Pamela Mathews, PE, LS, Van Cleef Engineering Associates, LLC, 32 Brower Lane, P.O. Box 5877, Hillsborough, NJ 08844. Telephone: 908.359.8291. Facsimile: 908.359.1580. Email: pmathews@vancleefengineering.com.

### 10.0 Summary

10.1 The applicant is seeking approval for a minor subdivision/lot line adjustment with bulk variances. Based on our initial review, the following variances and design waivers are required or may be required, depending on the additional information submitted by the applicant. This list is not exhaustive and may be augmented by analysis performed by other Board professionals.

a) Variances

§16-4.2d Lot Area

§16-4.2d Lot Depth

§16-4.2d Front Yard Setback\*

§16-4.2d Side Yard Setback\*

§16-4.2d Rear Yard Setback\*

§16-4.2d Accessory Structure Distance to Side Line

§16-4.2d Accessory Structure Distance to Rear Line

§16-4.1e Setback to Critical Areas\*

\*denotes a pre-existing condition

b) Design Exceptions

§16-5.6d.3 Trees

§16-5.6d.15 Street Trees

§16-5.14c.1(d) Sidewalks



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Please contact this office with any questions you may have.

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C. Jeremy Noll, PE, CME, CPWM  
Joseph P. Orsino, Jr. CET  
Marc H. Selover, LSRP, FG  
Benjamin R. Weller, PE, CME, CPWM, S-3, C-3

April 22, 2021  
55156 00

To: Cheryl Chrusz, Board Secretary  
Montgomery Township Planning Board  
2261 Van Horne Road  
Route 206  
Belle Mead, NJ 08502

From: Rakesh R. Darji, PE, PP, CME  
Board Engineer

Re: Caivano  
257 & 243 Hollow Road  
Montgomery Township  
Somerset County, New Jersey  
Block 12001, Lots 14 and 16  
**Minor Subdivision, Lot Line Adjustment**  
**Bulk Variance**  
**Review #2**  
Application #PB-10-20

Our office has reviewed the documents submitted by the applicant for a Minor Subdivision/Lot Line Adjustment with Bulk Variances. The applicant owns both Lots 14 and 16 of Block 12001. These parcels together contain 4 acres which includes the approximate Right-of-Way along Hollow Road and Camp Meeting Road. The survey does not provide sizes of the individual parcels however, upon subdivision, proposed Lot 14.02 will contain 1.057 acres and proposed Lot 16.01 will contain 33.730 acres.

Existing improvements include a 2-story dwelling with an existing well, driveway and shed on Lot 14. The shed appears to straddle the lot line as does the driveway area. The existing septic system is not shown on the plan. A 30" RCP and inlet are shown on existing Lot 16. The minor subdivision will place all existing improvements, with the exception of the 30" RCP on proposed Lot 14.02.

Both parcels are located within the R-5 (Single Family Residential-5) Zoning District. The property is surrounded by similar zoning. There is a PPE property within 200 feet of Lot 16.

The applicant is seeking this minor subdivision in order to install a new septic system to service the existing dwelling on Lot 14. The system will contain a 1,000-gallon double compartment tank which has been sized for a 3-bedroom dwelling. There are no improvements proposed on Lot 16 at this time. A proposed 20' wide drainage easement to be dedicated to Montgomery Township will be located on proposed Lot 16.01.

The following information has been submitted by the applicant in support of this application. This office has reviewed submitted documents for compliance with the submission requirements of the Montgomery Township Land Use Ordinance.

1. Montgomery Township Land Development Application, dated September 17, 2020.
2. Montgomery Township Minor Site Plan/Minor Subdivision Checklist, dated September 17, 2020.
3. Montgomery Township Variance Application Checklist, dated September 17, 2020.
4. Somerset County Planning Board Application, dated September 17, 2020.
5. Location Survey, prepared by Van Cleef Engineering Associates, dated June 1, 2020, revised through March 9, 2021.

6. Minor Subdivision – Lot Line Adjustment Plan, prepared by Van Cleef Engineering Associates, dated July 30, 2020, revised through March 25, 2021.
7. Septic System Design, prepared by Van Cleef Engineering Associates, dated March 17, 2020, revised through March 23, 2020.

**General Information**

Owner/Applicant: Wayne and Betsy Caivano  
257 Hollow Road  
Skillman, NJ 08558

Site Surveyor: Pamela Mathews, PE, PLS  
Van Cleef Engineering Associates, Inc.  
32 Brower Lane, PO Box 5877  
Hillsborough, NJ 08844

Site Engineer: Michael K. Ford, PE  
Van Cleef Engineering Associates, Inc.  
32 Brower Lane, PO Box 5877  
Hillsborough, NJ 08844

**Submission Waivers Requested:**

1. Item #64: This item states if a survey is referenced, a copy of a signed and sealed survey by a licensed NJ land surveyor, showing tract boundary, topo information, existing conditions, and all “critical areas” as defined by this chapter.
  - a. *The applicant has provided a location survey. A survey dated 1990 has been referenced on the plan but has not been provided.*

**Zoning - R-5 (Single Family Residential District)**

- A. In accordance with §16-4.2a, detached dwelling units are a permitted principal use.
- B. In accordance with §16-4.2b, a private residential storage shed, less than 400 SF is a permitted accessory use.

**Bulk Requirements in accordance with §16-4.2d for Lot 14/Proposed Lot 14.02**

	Required	Enhanced Requirements Footnote [2]	Existing (Lot 14)	Proposed (Lot 14.02)	
Principal Building					
Minimum Lot Area	5 Acres	3 Acres	0.273	1.057 Acres	<b>Variance</b>
Min Lot Frontage	300 FT	200 FT	74.79 FT	342.86 FT	Conforms
Min Lot Depth	500 FT	300 FT	161.1 FT	116.8 FT	<b>Variance</b>
Min Lot Width	300 FT	200 FT	73.9 FT	348.5 FT	Conforms
Min Front Yard Setback	75 FT	75 FT	24.3 FT	24.3 FT	<b>Variance</b>
Min Side Yard Setback	75 FT	50 FT	23.8 FT	23.8 FT	<b>Variance</b>
Min Rear Yard Setback	100 FT	100 FT	83.7 FT	83.7 FT	<b>Variance</b>
Max Lot Coverage	15%	15 %	19.2%	12.1%	Conforms
Max Building Coverage	8%	10 %	12.2%	2.6%	Conforms
Max Building Height	35 FT	35 FT	<35 FT	<35 FT	Conforms
Min Foundation Setback to Critical Area	20 FT	20 FT	Unknown	Unknown	
Accessory Building – Shed					
Min Side Yard Setback	50 FT	50 FT	0 FT	20.2 FT	<b>Variance</b>
Min Rear Yard	50 FT	50 FT	37.1 FT	35.8 FT	<b>Variance</b>

Setback					
Distance to other bldg.	20 FT	20 FT	44.9 FT	44.9 FT	Conforms
Max Building Coverage	2%	3%	0.7%	0.2%	Conform

**Bulk Requirements in accordance with §16-4.2d for Lot 16/Proposed Lot 16.01**

	Required	Enhanced Requirements FN [2]	Existing (Lot 16)	Proposed (Lot 16.01)	
<b>Principal Building</b>					
Minimum Lot Area	5 Acres	3 Acres	3.514 acres	2.730 acres	<b>Variance</b>
Min Lot Frontage - Camp Meeting Road	300 FT	200 FT	292.07 FT	292.07 FT	Conforms
Min Lot Frontage – Hollow Road	300 FT	200 FT	667.39 FT	399.33 FT	Conforms
Min Lot Depth	500 FT	300 FT	161.1 FT	212.2 FT	<b>Variance</b>
Min Lot Width – Camp Meeting Road	300 FT	200 FT	285.5 FT	285.5 FT	Conforms
Min Lot Width – Hollow Road	300 FT	200 FT	721.7 FT	447.1 FT	Conforms
Min Front Yard Setback	75 FT	75 FT	N/A	N/A	
Min Side Yard Setback	75 FT	50 FT	N/A	N/A	
Min Rear Yard Setback	100 FT	100 FT	N/A	N/A	
Max Lot Coverage	15%	15 %	2.1%	1.1%	Conforms
Max Building Coverage	8%	10 %	N/A	N/A	
Max Building Height	35 FT	35 FT	N/A	N/A	
Min Foundation Setback to Critical Area	20 FT	20 FT	N/A	N/A	
<b>Accessory Building - Shed</b>					
Min Side Yard Setback	50 FT	50 FT	0 FT	N/A	
Min Rear Yard Setback	50 FT	50 FT	35.8 FT	N/A	
Distance to other bldg.	20 FT	20 FT	N/A	N/A	
Max Building Coverage	2%	3%	0.03 %	N/A	

**Variances**

1. From the Zoning Requirements for the R-5 Single Family Residential for proposed Lot 14.02:

- §16-4.2d requires a minimum lot size of 5 acres where 1.057 acres is proposed. A variance will be required.
- §16-4.2d requires a minimum lot depth of 300 feet where 116.8 feet is proposed. A variance will be required.
- §16-4.2d requires a minimum side yard setback of 50 feet where 23.8 feet is proposed. This is an existing non-conforming condition. A variance will be required.
- §16-4.2d requires a minimum front yard setback of 75 feet where 24.3 feet is proposed. This is an existing non-conforming condition. A variance will be required.

- e. §16-4.2d requires a minimum rear yard setback of 100 feet where 83.7 feet is proposed. This is an existing non-conforming condition. A variance will be required.
2. From the Zoning Requirements for the R-5 Single Family Residential for proposed Lot 16.01:
  - a. §16-4.2d requires a minimum lot size of 5 acres where 2.730 acres is proposed. A variance will be required.
  - b. §16-4.2d required a minimum lot depth of 300 feet where 212.2 feet is proposed. This is an existing non-conforming condition. A variance will be required.
3. Ordinance section §16-4.1e states a 20-foot setback between the building foundation and any “critical areas” shall be provided. The existing structure provides a zero (0) foot setback to critical areas. The proposed septic system will also provide a zero (0) foot setback to critical areas. A variance will be required for both the existing and proposed conditions.
4. Ordinance section §16-4.2d, Footnote 8 requires a contiguous non-critical land area of 43,560 SF to support a dwelling, accessory buildings and any septic system, reserve septic system and potable water well. Further, this area shall be of such proportions as to permit the inscription of a 200-foot diameter circle or a 30,000 SF rectangle with a minimum length of 125 feet within said area. The applicant’s parcel for proposed Lot 14.02 is 1 acre. However, less than an acre is non-critical. A variance is required.
5. A Variance is required to permit the construction of the septic system within the critical area.
6. Ordinance section §16-4.2d, Footnote 8 requirements will need to be met should an application for construction on Proposed Lot 16.01 come before the Board.
7. Ordinance section §16-5.6d3 requires that 14 trees per acre are to be planted on single family residential lots, and a minimum of 14 trees per acre of gross tract shall be planted in open areas. A waiver will be required as no landscaping is proposed. Should the Board grant a waiver to permit the number of trees to be planted based upon the area of disturbance, the applicant should provide one (1) tree as the applicant is disturbing approximately 2,400 SF for the installation of the septic system.

#### **General Comments**

1. The applicant should provide testimony as to the intended disposition and/or future development potential of proposed 16.01.
2. The proposed setback lines for proposed lot 16.01 should be shown.
3. The location survey should show the current limit of both properties. The proposed lot lines should be removed from the survey plan.
4. Right of Way
  - a. The plans should be revised to dimension the width of the ROW to the centerline of Camp Meeting Road, and to verify that the ROW half-width complies with the Township Master Plan ROW.
  - b. The location survey shows an approximate ROW along Hollow Road. The intent of the applicant in providing a ROW dedication should be discussed and the plans revised to show the dedication area and width of the ROW to verify that the ROW half-width complies with the Township Master Plan ROW. The ROW should be provided on the entire frontage of Lot 14.02.
  - c. It is recommended that any approval granted be conditioned on the applicant dedicating the right-of-way by filed deed or other instrument deemed acceptable by the Board Solicitor.

5. The applicant should provide testimony as to the reason for the odd shape of the proposed lots. Absent a compelling reason, we recommend that the proposed lot lines be adjusted to a configuration which does not result in a narrow portion of proposed lot 16.01 being located behind proposed lot 14.02.
6. There is an existing 30" RCP crossing Lot 16. A proposed drainage easement is shown. The easement documents should be provided to the Board Professionals for review. It should be noted that any future improvements should not be constructed over this pipe crossing.
7. The proposed septic system to be located on proposed Lot 14.02 is located within the Montgomery Township Stream Corridor. A waiver from §16-6.4d6 may be required.
8. Note #3 states that septic system "site approval" was granted by the Montgomery County Board of Health on June 13, 2007, expires on June 12, 2013. The applicant shall provide testimony regarding the status of a current approval for the septic system from the Board of Health.
9. The Location survey does not indicate the location of trees on the property. It is unclear if any vegetation or trees will be removed for the proposed septic bed. The applicant should provide testimony regarding required tree clearing.
10. Background information reviewed by our office indicates that a landfill was operated on the subject property from the mid 60's to the mid 70's. The applicant should provide testimony related to the limits of the landfill. The limits of the landfill should be depicted on the plan. We defer to the board solicitor as to the requirement for a deed notice on either lot related to the presence of the land fill.
11. The minor subdivision will be filed by deed. The applicant shall submit metes and bounds descriptions and deed language (including any restrictions or notices) for review by the Board Professionals prior to filing.
12. The plans should identify proposed monumentation.

#### **Administrative**

13. All future resubmissions of the plans shall clearly indicate a revision date and be accompanied by a response letter addressing all comments from the Township staff and Board Professionals in a point-by-point fashion.

#### **Permits and Approvals**

14. The applicant shall secure any and all approvals, licenses and permits as required by any other board, agency or entity jurisdiction over the subject application or property. The following permits and approvals are required:
  - a. Somerset-Union Soil Conservation District
  - b. Somerset County Planning Board
  - c. Township of Montgomery Municipal Approvals (Engineering, Board of Health, etc.)
  - d. Delaware and Raritan Canal Commission
  - e. NJ DEP, Letter of Interpretation, footprint of disturbance
  - f. Any and all others that may be required.

Should you or the applicant have any questions, please feel free to contact me.

RRD/mbs

Cc: Betsy Caivano, Applicant  
Michael K. Ford, PE, Applicant's Engineer  
Michael Fedun, Esq., Applicant's Attorney  
Lori Savron, Director of Planning  
Emily Goldman, Board Planner  
Karen Cayci, Esq., Planning Board Attorney

LAUREN A. WASILAUSKI  
Open Space Coordinator



**PLANNING DEPARTMENT  
OPEN SPACE**

Municipal Building  
2261 Van Horne Road (Route 206)  
Belle Mead, New Jersey 08502-0001  
Phone: (908) 359-8211  
Fax: (908) 359-2006

E-Mail:  
[lwasilauski@twp.montgomery.nj.us](mailto:lwasilauski@twp.montgomery.nj.us)

**MEMORANDUM**

To: Montgomery Township Planning Board  
From: Lauren A. Wasilauski, Open Space Coordinator  
Date: April 13, 2021  
Re: PB-10-20: Wayne & Betsy Caivano  
Block 12001 Lots 14 & 16  
257 Hollow Road, Skillman  
Minor subdivision with variance

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This office has reviewed the following application materials and offers the comments below:

- “Minor Subdivision – Lot Line Adjustment Plan”, prepared by Van Cleef Engineering Associates, LLC (one sheet, last revised 3/25/2021)
- “Location Survey”, prepared by Van Cleef Engineering Associates, LLC (one sheet, last revised 3/9/2021)

**A. Application Overview**

1. The applicant proposes to shift the southerly lot line of Lot 14 to the south approximately 249.53 feet to take acreage from Lot 16. Existing Lot 14 is 0.273 acres, and the proposed lot line adjustment would make proposed Lot 14.02 increase to 1.001 acres (after Hollow Road ROW dedication). The minor subdivision is requested to allow for installation of a new septic system, which must be located on the same tax lot as the dwelling it serves.
2. The property is located in the R-5 zoning district (residential, 5 acre minimum lot size).
3. Lot 14 contains an existing single family dwelling, deck and walkway. Lot 16 contains a parking area, walkway, and retaining wall. A shed straddles the current shared lot line of Lots 14 & 16.
4. The applicant is requesting variances for lot size; lot depth; side yard setback, front yard setback, and rear yard setback for the existing dwelling; and distance to sideline and distance to rear line for the existing accessory building.
5. The applicant is requesting submission waivers for delineating ponds, wetlands, etc.; showing existing and proposed contours; and showing critical areas.

6. The applicant is requesting a design waiver for planting the required 14 trees per acre.

**B. Zoning & Application Review**

1. This office recommends that the Board discuss whether doctrine of merger applies in this application scenario, resulting in the lots being merged. This would create one lot that is non-conforming, rather than two non-conforming lots.
2. The applicant's professionals should provide testimony regarding inconsistent information in the application, and perhaps corrected application pages.
  - a. The zoning chart on the "Lot Line Adjustment" plan uses the lot acreages before the right-of-way dedication.
  - b. Page 11 of the application packet references "Lot 27.01" in multiple places, as well as a reference to front yard setback of 60.6', which does not match the zoning chart on lot line adjustment plan.

**C. Previous Land Use**

1. According to the Tax Assessor's records, lot 16 was a former landfill site in the 1960s and 1970s.
2. This office is not familiar with the NJDEP regulations regarding former landfills. If the recommendations made in this memo regarding tree planting and conservation deed restrictions are incompatible with the State's regulations, this office defers to those regulations.
3. As this application proposes to move the lot line between lots 14 and 16, this office encourages the Board to impose a condition requiring a deed notice of this former use for any transfer of lots 14 and/or 16. If the Board grants the lot line adjustment, the area formerly used as landfill could be partially located on proposed lot 14.02, and the record for a future owner should clearly reflect that.

**D. Sidewalks / Pedestrian Connectivity**

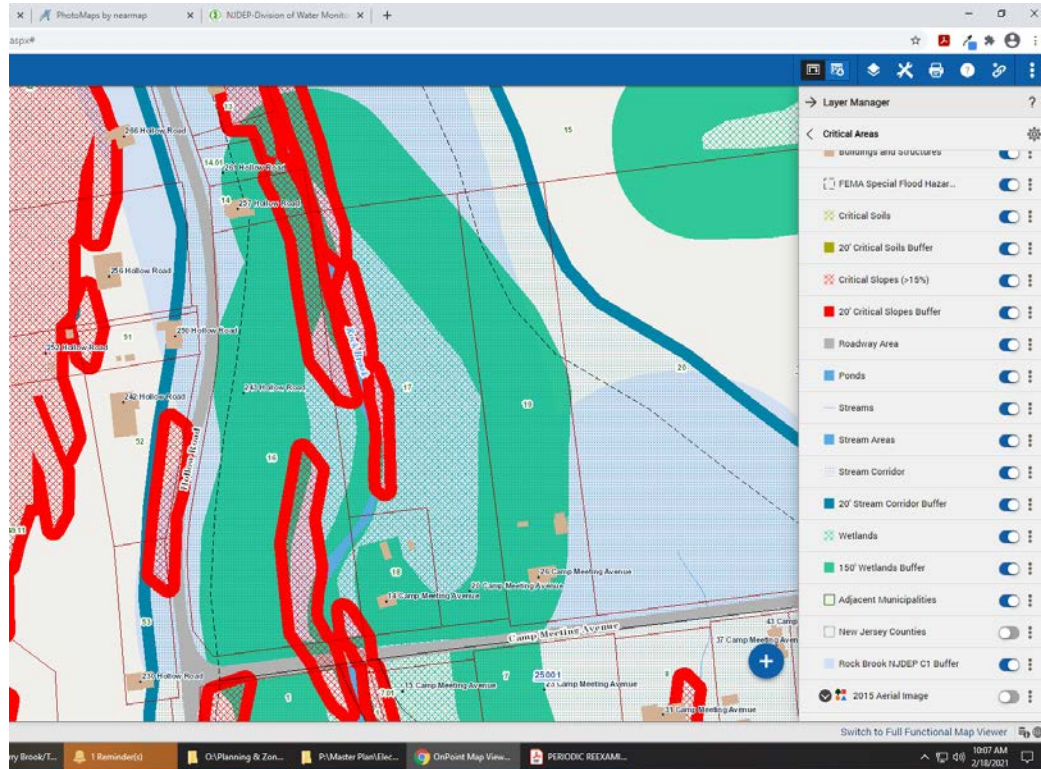
1. Township Code Section 16-5.14C requires sidewalks along all public roadways, except in the MR zoning district.
2. The applicant's plans do not propose any sidewalk.
3. This office defers to the Township Engineer on whether a right of way dedication is needed on Camp Meeting Avenue to accommodate a future sidewalk in this location. A sidewalk along

Camp Meeting Avenue is indicated on the Pedestrian-Bikeway Corridor Plan (attached). The Township is actively engaged in constructing pathways in the vicinity.

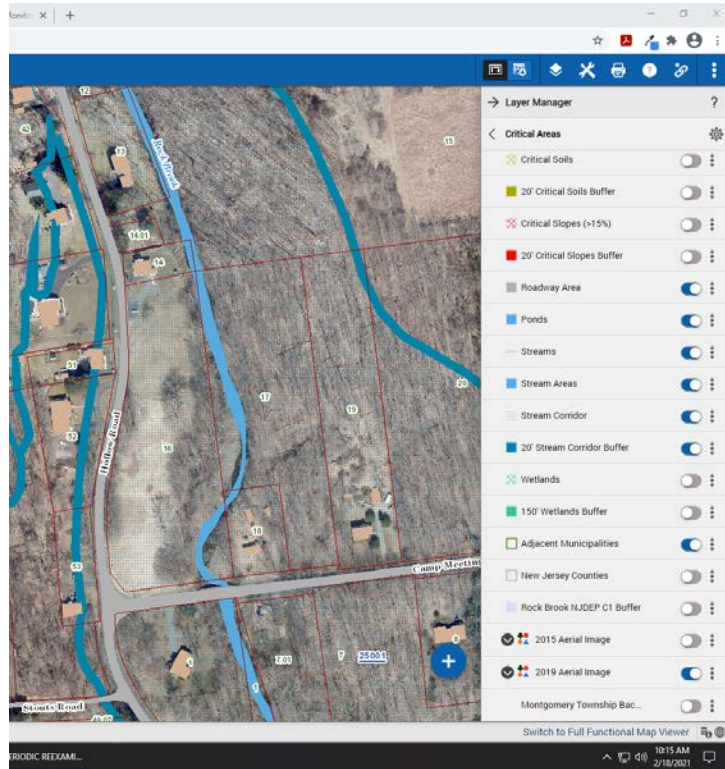
- a. The Township is currently constructing 2 miles of pathway along Skillman Road between Route 601 and Burnt Hill Road – known as Phase 1 of the Skillman Road pathway project.
- b. Phase 2 will extend the pathway west along Skillman Road to the Otto Kaufman Community Center. Phase 2 is currently in design and permitting.

#### **E. Landscaping & Buffering**

1. **Street Trees:** Code Section 16-5.6d.15 requires street trees at 50' intervals.
  - a. The applicant has 292.07' of frontage on Camp Meeting Avenue and 742.19' of frontage on Hollow Road. According to the ordinance calculation, 6 trees on Camp Meeting Avenue and 15 trees on Hollow Road would be required. The applicant proposes no trees.
  - b. This office defers to the Township Landscape Architect for a determination on the adequacy of the existing vegetation along the road frontage, and whether it meets the ordinance requirement.
  - c. The applicant should work with the Township Landscape Architect on placement of any new trees to avoid long-term conflicts with the overhead wires.
2. **Shade Trees:** Township Code Section 16-5.6.d.3 requires 14 trees per acre for residential and non-residential development.
  - a. Based on the property size of combined lots 14 and 16 of 3.787 acres, a total of 53 shade trees are required. Trees planted as street trees or for landscape buffering do not count toward meeting this requirement.
  - b. The applicant is requesting a waiver of the tree planting requirement.
  - c. According to NJDEP infrared photography and Township mapping, the entirety of the site is impacted by one or more critical areas, including Township stream corridor, assumed wetlands and associated buffer areas, steep slopes and associated buffer. The property lies entirely within the Rock Brook Category One stream buffer (see map on following page).
    - i. Rock Brook – from its headwaters in Hillsborough to Camp Meeting Avenue – was reclassified last year by NJDEP as a Category One stream. A Category One stream is the highest designation in New Jersey for streams that are exceptionally important to ecology, water quality, and water supply.



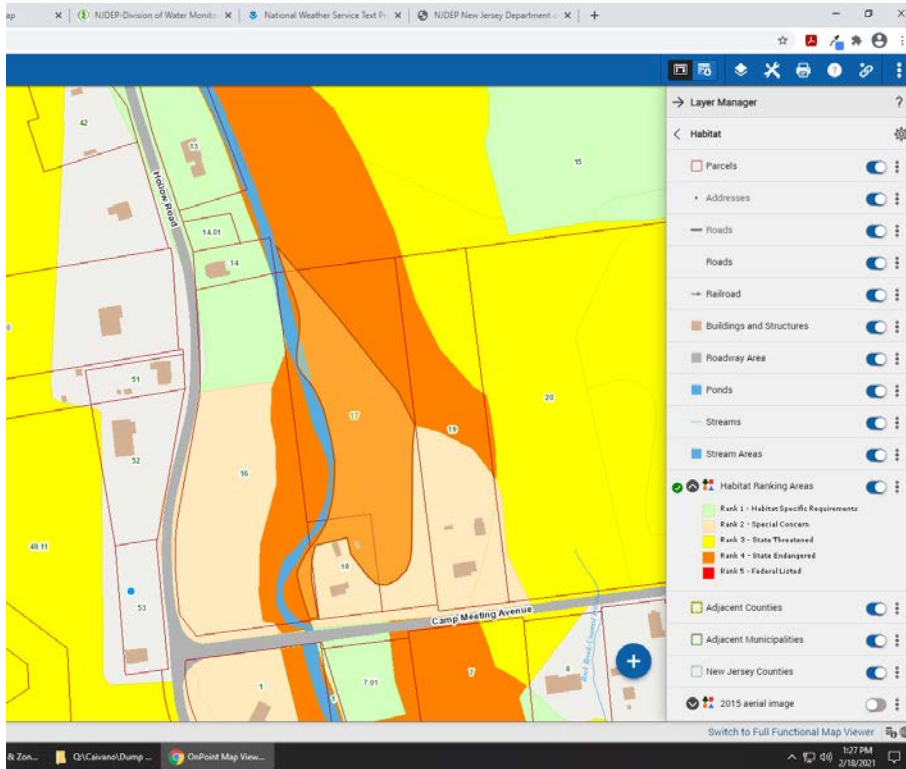
- d. This office does not support the granting of the waiver for tree planting. The required number of trees should be planted to enhance these areas, much of which appears to be mowed grass (see aerial image on following page).
  - i. An exception to this recommendation is explained in section C of this memo regarding the use as a former landfill.
  - ii. If NJDEP regulations regarding former landfill sites do not permit planting of trees, the applicant may instead contribute funds toward the Township Tree Bank per Township Code Section 16-5.6.d.3.b.



- e. This office defers to the Board Landscape Architect on placement and review of species.
3. **Species:** Township Code Section 16-5.6.d.5 requires native plant species.
  - a. This office defers further review of proposed species to the Board Landscape Architect and Shade Tree Committee.
4. **Landscape guarantee:** Township Code Section 16-5.6.d.10 requires a 2 year guarantee on all plant materials.

## F. Critical Areas; Threatened & Endangered Species

1. According to the NJDEP and Township's mapping, the entirety of the property is impacted by one or more critical areas. Township Code Section 16-5.6e requires a conservation deed restriction or conservation easement on all critical areas.
2. A portion of Lot 16 is indicated as habitat for threatened & endangered species, specifically the State endangered Bald Eagle (see map on following page). Code Sections 16-5.2(e) & (g) and 16-6.4(e) require threatened and endangered species habitat to be protected by a conservation easement or deed restriction.



3. Given the knowledge of the former use of the property as landfill, it seems impractical to require a conservation deed restriction in case any further action, maintenance or remediation is needed. The applicant should provide more information to the Board in their verbal testimony regarding any cleanup, materials removal or other actions taken to “close” and/or remediate the landfill.





**ENVIRONMENTAL COMMISSION**

Municipal Building  
2261 Van Horne Road (Route 206)  
Belle Mead, NJ 08502

Phone: (908) 359-8211  
Fax: (908) 359-2006

To: Montgomery Township Site Plan/Subdivision Committee  
From: Montgomery Township Environmental Commission  
Re: PB-10-20 Betsy Caivano  
Date: February 24, 2021

1. The Environmental Commission recommends granting the lot line adjustment.
2. We do not recommend granting a waiver for tree planting.
  - a. Section 16-5.6 d. 3. of Montgomery's Land Development Ordinance states: A minimum of fourteen (14) trees per acre shall be planted on single family residential lots and a minimum of fourteen (14) trees per acre of gross tract shall be planted in open areas. . . Any trees provided to meet the required street tree and/or buffer requirement shall not be counted towards the minimum tree requirement.
  - b. In Section 16-6.4 Critical Areas, from Montgomery's Land Development Ordinance, stream corridors are protected for the purpose of improving water quality in our streams, which are one of our drinking water sources, and for preserving wetland habitats for plants and wildlife. Montgomery's Land Development Ordinance states:

Item (c) Provisions Governing Activities in Stream Corridors

(1) For any construction or development in a stream corridor, the applicant shall rehabilitate any degraded or disturbed areas of the stream corridor, unless the applicant demonstrates that it is not reasonably feasible to do so.

(3) Rehabilitation shall include reforestation, stream bank stabilization and removal of debris.

(4) The Township Engineer or applicable development board may require additional measures or impose reasonable conditions on the development to promote the public safety, health and welfare, to protect public and private property, wildlife and fisheries, and to preserve and enhance the natural environment of the stream corridor and may consult with other Township representatives for guidance.
  - c. The Environmental Commission recommends that the required trees be planted in the stream corridor of Rock Brook, or nearby, to protect the natural environment of the stream corridor. We would be happy to consult with the property owner on suitable plants and locations or any other relevant issues.

**From:** Richard Bartolone [mailto:rbartolone@optonline.net]  
**Sent:** Wednesday, April 14, 2021 10:46 AM  
**To:** Cheryl Chrusz <CChrusz@twp.montgomery.nj.us>;  
**Subject:** Re: Caivano

Chery,

I have no issue with this application.

Rich

**From:** Kristen Sargent  
**Sent:** Friday, April 9, 2021 3:22 PM  
**To:** Cheryl Chrusz <CChrusz@twp.montgomery.nj.us>  
**Subject:** PB-10-20

Chery,

The Health Department has no comments.

Thanks,

*Kristen Sargent, REHS*

Montgomery Township Health Department  
2261 Route 206  
Belle Mead, NJ 08502  
Phone (908)359-8211 ext 2250  
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