

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

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

B U R G I S
ASSOCIATES, INC.

MEMORANDUM

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

From: David Novak PP, AICP

Subject: Bindi Patel
C Variance Relief
Block 17.15 Lot 1
564 Village Road West

Date: February 17, 2022

BA#: 3908.04

WWT#: 22-01

Introduction

The applicant, Bindi Patel, has submitted an application seeking "c" variance relief to construct an in-ground pool and concrete patio to the rear of an existing dwelling. The site, which is identified by municipal tax records as Block 17.15 Lot 1, is located at 564 Village Road West in the R-30 Residence District.

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

1. Pool plot Plan prepared by E&LP, dated October 21, 2021 (no revision date).
2. Photographs of dwelling, aerial of property.

Property Description

The subject site is located in the central portion of the Township, approximately 310 feet to the east of the intersection of Village Road West and Penn Lyle Road. The site has an area of approximately 36,314 square feet and is mostly rectangular in shape. It fronts along Village Road West for 171 feet and has a depth of 231.48 feet.

The site is presently developed with a two-story dwelling which is setback 52.30 feet from Village Road West. The dwelling has a footprint of approximately 2,448 square feet. A paver patio is presently located along its rear, and a shed is located near the property's northwesterly rear corner. Access to the site is provided by a paved driveway which connects Village Road West to an attached two-car garage. Walkways are located to the front and side of the dwelling. A 15-foot wide drainage easement is located along the rear property line, while a 5-foot wide utility easement is located along the front property line.

Surrounding land uses consist predominantly of single-family dwellings to the west, north, and east. St. David the King Roman Catholic Church is located to the south. Please see the aerial at the end of this memorandum for an overview of the subject site and its surrounding environs.

Proposed Improvements

The applicant proposes to construct a pool and associated patio to the north (rear) of the existing patio area. A smaller expansion of the paver patio is also proposed along its easterly side. A 28-square foot concrete pad for pool equipment is to be located to the northeast of the proposed pool. A 5-foot tall fence is also proposed which will extend from the rear of the dwelling and traverse the side and rear property lines, thus encapsulating the rear yard.

Master Plan

As per the 2020 Land Use Plan, the site is located in the Medium Density Single Family Residential (R-30, R-30A, R-30B, R-30C, and R-30D) land use category, which is primarily located in the central portion of the Township. The 2020 Plan notes that this land use category is, for the most part, entirely developed with single-family dwellings with typical lot sizes of thirty thousand square feet. The main intent of this land use category and corresponding zoning district is to recognize and preserve the established character of these neighborhoods and to reinforce the prevailing minimum lot size of thirty thousand square feet. The Land Use Plan also encourages the additional preservation of open space, where existing, to maintain the quality of life in these neighborhoods.

Zoning and “c” Variance Relief

The site is located in the R-30 Residence District. The following table outlines the zoning regulations for that district. Standards from Section 200-266C., which pertain to swimming pools, are also included.

Table 1: R-30 Resident District Bulk Standards

Area & Bulk Regulations	R-30	Existing	Proposed	Section
Minimum Lot Area (sf)	30,000	36,314.00	36,314.00	200-163A
Minimum Lot Width (ft)	150	*166.5	*166.5	200-163B
Minimum Front Yard (ft)	40	52.30	52.30	200-163C.(1)
Minimum Rear Yard (ft)	30	138.40	1384.0	200-163.C.(2)
Minimum Side Yard (ft)	30	31.95	31.95	200-163.C.(3)
Maximum FAR (%)	13	7.27	7.27	200-163D.
Max. Improvement Cov. (%)	18	17.97	(V) 25.15	200-163E.
Max. Building Height (st/ft)	2.5/35	2/<35	2/<35	200-163F.
Pool Standards				
Located on Same Lot	Required	N/A	Proposed	200-266C.(1)
Side/Rear Yard Setback (ft)	20	N/A	42.74	200-266C.(2)
Screening	Required	N/A	Proposed	200-266C.(3)

(ex) Nonconforming Condition; (V) Variance; * Estimate

As noted in the above table, the applicant has requested variance relief pursuant to NJSA 40:55D-70c.(1) or (2) of the Municipal Land Use Law (MLUL) from Section 200-163E. of the Township’s land use regulations. This provision establishes a maximum improvement coverage of 18% for the R-30 District which equates to 6,536 square feet of allowable coverage for the site. The applicant has proposed an improvement coverage of 25.15% which equates to 9,133 square feet. For reference, “improvement coverage” is defined by Section 200-4 of the Township’s land use regulations as follows.

“The building coverage plus the area of all paved surfaces, both impervious and pervious, which cover a lot, such as required parking spaces, including necessary maneuvering areas, passageways and driveways giving access thereto, service areas, accessways, streets, walkways, patios and plazas but excluding walkways, impervious or pervious materials used as landscape elements, such as fish ponds, birdbaths, stone/wood mulch used as a landscape feature in flower areas, walls made of wood, stone, pavers or similar materials enclosing flower or vegetable gardens, bark mulch, crushed stone, blue stone or similar materials used in flower or vegetable gardens for weed control and/or the appearance of the materials.”

Section 200-266C.(5), which outlines the requirements for swimming pools and similar personal recreational facilities, further establishes that “a pool or water surface shall not be counted as part of a lot’s maximum improvement coverage requirements.”

Statutory Criteria

The applicant has requested variance relief pursuant to NJSA 40:55D-70(c)(1) and/or (2). The statute provides two approaches to 'c' variance relief, commonly referred to as the 'physical features' test and the 'public benefits' test. These are identified as follows:

Physical Features Test

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.

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.

In consideration of the above, the applicant and the Board should discuss the following issues:

1. Lot Size and Configuration

The applicant and the Board should discuss the existing lot size and configuration in relationship to the R-30 District standards as well as to its adjoining properties. We note that the property presently meets the bulk criteria of the R-30 District and appears to be of a similar size to those properties in the surrounding area.

In addition, testimony should be provided as to whether any adjoining properties also contain pools. As indicated on the aerial map in this memorandum, it appears as though 560 Village Road West has a pool in its rear yard. Furthermore, 562 Village Road West appears to have a deck/patio area in its rear yard as well.

2. Improvement Coverage

The applicant has provided an “impervious coverage calculations” table on Sheet 1 of its plot plan. This table identifies that the “pool and pool equipment” account for 957 square feet of coverage, excluding the pool area. As previously noted, Section 200-266C.(5) notes that pools and water surfaces shall not be counted as part of a lot’s maximum improvement coverage.

The applicant should discuss whether they examined ways to potentially reduce the amount of existing and proposed improvement coverage. Specifically, we note the following:

- a. Testimony should be provided as to whether the pool could potentially be moved closer to the existing paver patio in order to reduce the size of the new proposed patio area.
- b. The proposed size of the pool should be discussed, and how it relates to typical pool sizes.
- c. The applicant should discuss the proposed easterly expansion of the existing paver patio, and the rationale for this expansion.
- d. The applicant should discuss whether any pervious materials were considered.

3. Fencing

As previously noted, the applicant proposes a fence within the rear yard area. We recommend that a detail or cutsheet of the proposed fencing be provided. Section 200-226C. establishes that pools shall be appropriate screened and fenced so as to not adversely affect adjoining properties.

4. Pool Equipment

Section 200-266C.(2) establishes that swimming pools and other similar personal recreational facilities shall be setback a minimum of 20 feet from any side or rear property line. The proposed pool equipment is setback 24.15 feet from the easterly property line. However, it is our understanding that the Township does not typically include pool equipment or other similar appurtenances within its setback requirements. Thus, no variance for this item is required.

5. Stormwater and Drainage

Testimony should be provided as to how the proposed pool will impact stormwater and drainage on site. We defer to the Board’s engineering consultant regarding this matter.

6. All Applicable Codes and Ordinances

Section 200-266C.(4) establishes that pools “shall meet all applicable codes and ordinances of the Township of West Windsor and any regulations of a county or state agency.” Thus, should the Board approve this application, we recommend this be established as a condition.



Map 1: Aerial of Subject Site (scale: 1" = 200')

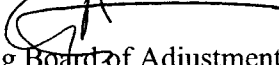
C:\Users\DavidN\Desktop\PB 3908.04 Bindi Patel - d(4) Variance (ZB 22-01).docx

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MEMORANDUM

via Electronic Mail

To: West Windsor Township Zoning Board of Adjustment

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

Date: February 4, 2022

**Re: West Windsor Township Zoning Board of Adjustment - Bindi and Kash Patel:
Bulk Variance Application No. ZB22-01; Block 17.15, Lot 1 West Windsor
Township Tax Map; 564 Village Road West; R-30 Residential Zoning District**

The West Windsor Township Zoning Board of Adjustment ("Board") will consider the above-referenced application at its meeting on March 3, 2022.

Bindi and Kash Patel ("Applicants") propose improving their existing family home located at 564 Village Road West and designated as Block 17.15, Lot 1 West Windsor Township Tax Map ("Property") by installing an inground swimming pool surrounded by pavers.

The Property is located in the R-30 Residential Zoning District. Section 200-163.E of the West Windsor Township Land Use Code ("LUO") limits the maximum improvement coverage within the zone to 18%. In reviewing the plan entitled "Pool Plot Plan" prepared by Engineering & Land Planning Associates, Inc. dated October 21, 2021, following the installation of the pavers surrounding the pool, the Property will have a maximum improvement coverage 25.15%.

Section 200-163.C(3) LUO also requires a minimum side yard of 30 feet. In reviewing the Pool Plot Plan referenced above, it appears as though there will be a concrete pad structure for the pool equipment installed along the Property's easterly boundary line at a setback of 24.15 feet.

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February 4, 2022
Page 2

Consequently, the Applicants require bulk variance relief for both of these conditions which are noncompliant within the R-30 Residential Zoning District.

In evaluating the application, the Board should apply the following standard as set forth in Jacoby v. Englewood Cliffs Zoning Board of Adjustment, 442 N.J. Super. 450, App. Div.

2015:

- (1) The application relates to a specific piece of property;
- (2) That the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements;
- (3) That the variance can be granted without substantial detriment to the public good;
- (4) That the benefits of the deviation would substantially outweigh any detriment; and
- (5) That the variance would not substantially impair the intent and purpose of the zone plan or the zoning ordinance for the R-30 Residential Neighborhood wherein the Property is located.

Under Kaufmann vs. Planning Board for Warren Township, 110 N.J. 551 (1988), the Board must be satisfied that the grant of any bulk variance approval would actually benefit the zoning scheme for the neighborhood and granting the variance relief would represent a better zoning alternative for the specific property.

In reviewing the application materials, following the installation of the inground swimming pool and the pavers surrounding it, the Property still will have a rear yard setback

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February 4, 2022
Page 3

from the new pool of approximately 68 feet whereas 30 feet is required. The Board must be satisfied that the Property can appropriately accommodate slightly more improvement coverage than otherwise permitted in the R-30 Zoning District. At the hearing, the Applicants should offer testimony concerning the existing buffering along the rear of their Property from the neighboring property particularly the lot to the east of the Property where the 30-foot side yard setback is not being maintained as a result of the pool equipment installation. Testimony should also be offered concerning whether or not the pool equipment on this concrete pad will create any noise which might be an annoyance to the neighboring property.

Finally, the Board must be satisfied that approving the variance relief sought by the Applicants will promote the general welfare as required by the purposes of the Municipal Land Use Law (*N.J.S.A. 40:55D-2.a.*) and allowing slightly more improvement coverage on the Property will still allow the Property to have an appropriate level of development within the R-30 neighborhood wherein the Property is located.

cc: Samuel J. Surtees, Manager, Land Use Division (via email)

Lisa Komjati, Administrative Secretary (via email)
Division of Land Use

Mr. and Mrs. Bindi Patel (via email)