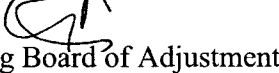


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COUNSELLORS AT LAW

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 2, 2022

Re: West Windsor Township Zoning Board of Adjustment - Marc J. and Sharon A. Sibia: FAR Use Variance Application No. ZB22-02; Block 42, Lot 7 West Windsor Township Tax Map; 217 Washington Road; R-20 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.

Marc J. and Sharon A. Sibia ("Applicants") propose improving their existing single-family home located at 217 Washington Road and designated as Block 42, Lot 7 on the West Windsor Township Tax Map ("Property") by converting the attic space in their house to add a new bedroom and bathroom. This addition will not involve any external changes to the exterior of the Applicants' house.

The Property is located in the R-20 Residential Zoning District. Under Section 200-173D of the West Windsor Township Land Use Ordinance, the Floor Area Ratio ("FAR") in the R-20 Residential Zoning District is limited to 13%. Following the Applicants' conversion of the attic space to a bedroom and bathroom, this new habitable space will result in the Property having an

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FAR of 14.3%. Consequently, the Applicants seek from the Board a d(4) use variance for the 1.3% that the Property will exceed the permitted FAR.

When the Applicants appear before the Board, they have to satisfy both the "positive" as well as the "negative" criteria. With regard to the positive criteria, the application for the variance relief indicates that the conversion of the attic to bedroom and bathroom will allow the Applicants' daughter, husband and soon-to-be child to reside with the Applicants. Through the Applicants' testimony, they must demonstrate to the Board that "special reasons" do exist for their qualifying for the variance relief sought. These special reasons would fall under one or more purposes of the New Jersey Municipal Land Use Law which is to "promote the general welfare" and in the context of this application permit the Applicants to provide a space for family members to reside with them.

Under Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), the Applicants must persuade the Board that the additional FAR can be accommodated on their Property. The Board must also evaluate whether or not the 1.3% differential in the permitted FAR would have a negative impact on the neighborhood wherein the Property is located. The Board can take into consideration that there are no exterior changes proposed to the Applicants' home and the attic space conversion will be accomplished wholly within the existing structure. If the Board is satisfied that the improvements proposed to the Applicants' Property would not substantially impair the intent and purpose of the R-20 zone plan for the neighborhood wherein

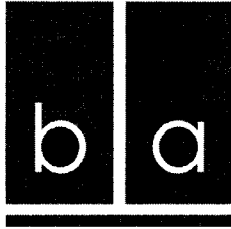
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the Property is located, and the Applicants can demonstrate to the Board's satisfaction that there are other residential properties in the vicinity of the Property that also have FARs slightly exceeding that permitted by the Land Use Ordinance, then they will have also satisfied the "negative criteria".

Finally, as indicated above, this application involves the consideration of a use variance. This means that the application must be approved by at least five of the seven member zoning Board of Adjustment.

cc: Samuel J. Surtees, Manager, Land Use Division (via email)
Lisa Komjati, Zoning Board Administrative Secretary (via email)
Mr. and Mrs. Marc J. Sibilja (via email)



COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
ASSOCIATES, INC.

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

MEMORANDUM

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

From: David Novak PP, AICP

Subject: Marc and Sharon Sibilía
d(4) Floor Area Ratio Variance
Block 42 Lot 7
217 Washington Road

Date: February 22, 2022

BA#: 3908.03

WWT#: 22-02

Introduction

The applicant, Marc and Sharon Sibilía, has submitted an application seeking d(4) floor area ratio (FAR) variance relief to construct a bedroom and a bathroom in an existing attic storage space. The site, which is identified by municipal tax records as Block 42 Lot 7, is located at 217 Washington Road in the R-20 Low-/Medium-Density Residential District.

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

1. Copy of survey prepared by William B. Pinder, dated October 18, 1994.
2. Architectural drawing of attic level, no title block provided.
3. Site photographs.

Property Description

The subject site is located in the northerly portion of the Township, near the intersection of Washington Road and Fairview Avenue. The site has an area of approximately 16,500 square feet (0.38 acres) and is rectangular in shape. It fronts along Washington Road for 60 feet and has a depth of 275 feet.

The site is presently developed with a frame cape dwelling which is located in its southerly half. The dwelling has an existing floor area of approximately 1,998 square feet (or approximately 1,939 square feet pursuant to the Township's tax records). Other improvements include a two-car garage and frame shed, both of which are located to the rear of the dwelling. Vehicular access is provided by a gravel driveway which extends along the northerly property line.

Surrounding land uses consist predominantly of single-family dwellings. A vacant lot is located to the south of the site. 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 bedroom and a bathroom in an existing attic storage space. These proposed new rooms will be located along either side of an existing staircase. The attic will continue to contain storage spaces as well as another existing bedroom. No expansion to the building or exterior façade changes are proposed.

Master Plan

As per the 2020 Land Use Plan, the site is located in the Medium Density Single Family Residential (R-20, R-20A, and R-20B) land use category, which is primarily located in the central and northerly portions 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 twenty thousand (20,000) 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 twenty thousand (20,000) square feet.

Zoning and “d(4)” Variance Relief

The site is located in the R-20 Residence District. The following table outlines the zoning regulations for the R-20 District.

Table 1: R-20 Resident District Bulk Standards

Area & Bulk Regulations	R-20	Existing	Proposed	Section
Minimum Lot Area (sf)	20,000	(ex) 16,500.0	(ex) 16,500.0	200-173.2A
Minimum Lot Width (ft)	100	(ex) 60.0	(ex) 60.0	200-173.2B
Minimum Front Yard (ft)	40	67.4	67.4	200-173.2C(1)
Minimum Rear Yard (ft)	30	> 30.0	> 30.0	200-173.2C(2)
Minimum Side Yard (ft)	15	(ex) 6.0	(ex) 6.0	200-173.2C(3)
Maximum FAR (%)	13	*12.1	(V) 14.3	200-173.2D
Max. Improvement Cov. (%)	20	Not specified	Not specified	200-173.2E
Max. Building Height (st/ft)	2.5/35	< 2.5/35	< 2.5/35	200-173.2F

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

As noted in the above table, the applicant has requested variance relief pursuant to NJSA 40:55D-70d.(4) of the Municipal Land Use Law (MLUL) for an increase in the permitted floor area ratio (FAR). For reference, “floor area” is defined by Section 200-4 of the Township’s land use regulations as follows. Those portions of a building which are not included as floor area are underlined and italicized.

The sum of the gross horizontal areas of the several floors of a building or group of buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two buildings. Floor area shall not include roof overhangs less than three feet or any floors or portions thereof contained on terraces or balconies projecting beyond the exterior face of the building, areas occupied permanently by mechanical equipment,) any space where the floor-to-ceiling height shall be less than seven feet, provided that such space shall be used only for storage, building maintenance and operation activities, and roofed or enclosed areas devoted exclusively to off-street parking and loading spaces in excess of the number required by ordinance. Basements which satisfy applicable construction code definitions of habitable space, whether finished or unfinished, are included in floor area calculations for residential purposes.

The dwelling is permitted to have a FAR of thirteen percent (13%) which equates to approximately 2,145 square feet of floor area, whereas the applicant has proposed a FAR of 14.3% which equates to approximately 2,349 square feet of floor area. For reference, the dwelling presently has a FAR of approximately 12.1%.

Statutory Criteria

The applicant has requested variance relief pursuant to N.J.S.A. 40:55D-70.d(4) of the Municipal Land Use Law (MLUL) for an increase in the permitted floor area ratio (FAR). As previously noted, the R-20 District establishes a maximum FAR of thirteen percent (13%), whereas the applicant has proposed a FAR of 14.3%.

Randolph Town Center v. Township of Randolph, 324 N.J. Super at. 416 provides guidance for Boards of Adjustments in evaluating applications requesting "d(4)" variance relief. In that decision, the Court held that in establishing special reasons for a FAR variance, boards should look to *Coventry Square v. Westwood Zoning Board of Adjustment* and not *Medici v. BPR* for guidance. Therefore, an applicant requesting "d(4)" variance relief does not need to show that the site is particularly suited for more intensive development. Rather, an applicant must demonstrate that the site will accommodate the problems associated with a floor area larger than that permitted by the ordinance.

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

1. Calculation of FAR

The applicant should confirm that the existing and proposed FAR was calculated pursuant to the Township's definition of "floor area." Specifically, the applicant should confirm that the calculated floor area does not include any of the provisions which are specifically exempt from that term.

2. Nature of Addition

Testimony should be provided as to the nature of the proposed addition. Specifically, the applicant should discuss the proposed location of the construction within the existing dwelling, as well as its visibility from both the right-of-way and adjoining properties.

As previously noted, a bedroom and bathroom are proposed in the existing attic space. Based upon the application materials as well as the provided architectural plan, it does not appear as though any expansions of the dwelling or façade changes are proposed. Moreover, it appears as if both rooms will have windows. This should be confirmed.

3. Bedroom Count and Parking

The applicant should provide the existing and proposed number of bedrooms in order to ensure that the dwelling will meet the parking requirements of the Residential Site Improvement Standards (RSIS). As noted by NJAC 5:21-4.14 of the RSIS:

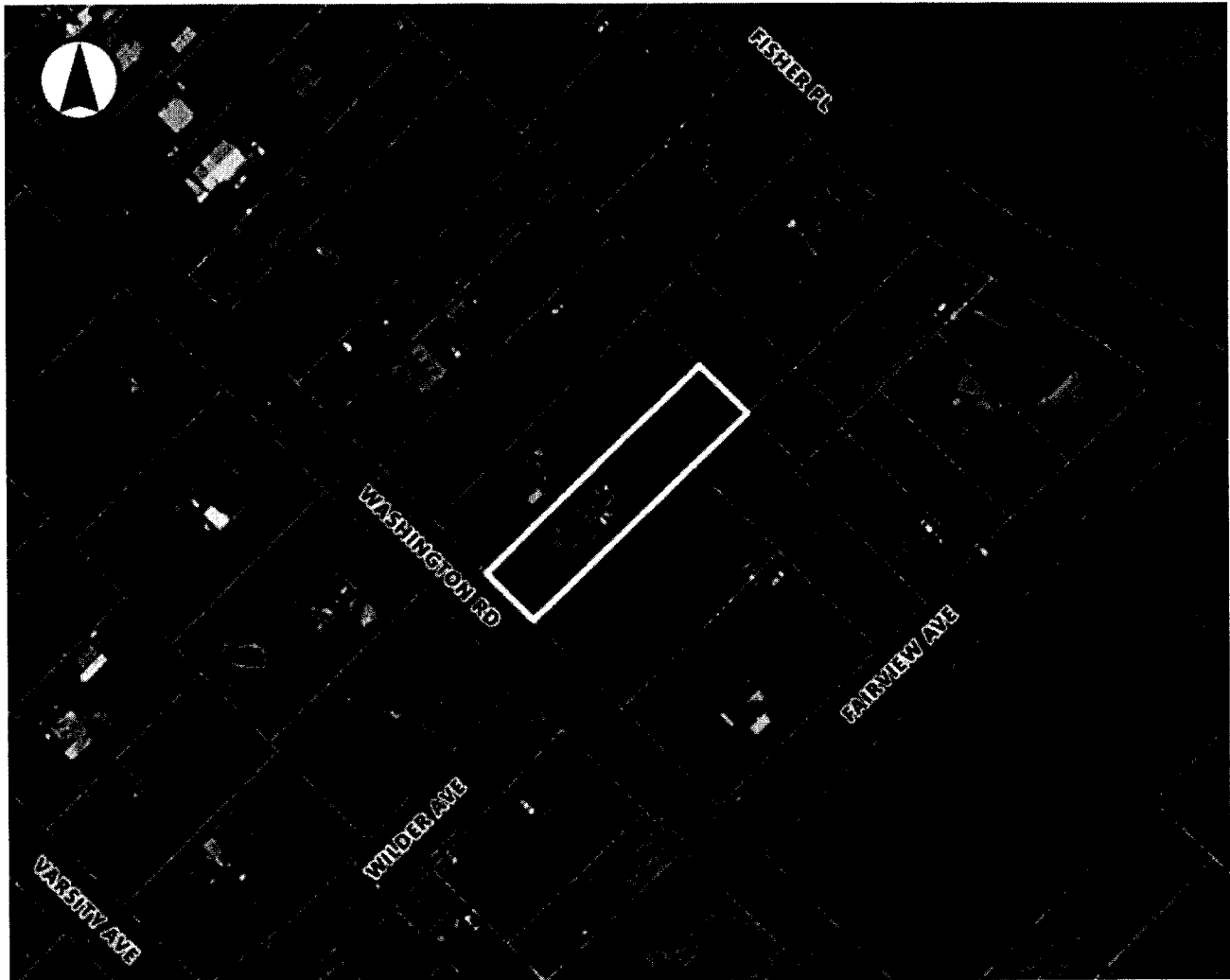
- a. A two (2) bedroom single-family dwelling requires 1.5 parking spaces;
- b. A three (3) bedroom single-family dwelling requires 2.0 parking spaces;
- c. A four (4) bedroom single-family dwelling requires 2.5 parking spaces;
- d. A five (5) bedroom single-family dwelling requires 3.0 parking spaces.

The dwelling presently has a two-car garage as well as a driveway with a length of approximately 150 feet. The width of the driveway increases in front of the two-car garage. As established by the RSIS, a two-car garage and a driveway combination shall count as 3.5 parking spaces, provided a minimum parking width of 20 feet is provided for a minimum length of 18 feet.

4. Comparison to Neighborhood

The applicant has provided a comparison of the proposed FAR to the existing FARs in the surrounding area. It appears that this information is based upon tax information. This should be confirmed by the applicant.

Two (2) maps have been provided with this memorandum which respectively identify those dwellings within the vicinity which exceed the FAR standards established by the R-20 District, as well as those which exceed the proposed FAR of the subject site. In those instances where the FAR was unknown, our office provided an estimate based on GIS data. As shown, seven (7) dwellings in the area presently exceed the FAR permitted by the R-20 District, while five (5) dwellings exceed the FAR proposed by the applicant.



Map 1: Aerial of Subject Site (scale: 1" = 150')

[https://burgis.sharepoint.com/sites/BurgisData/Shared Documents/W-DOCS/PUBLIC/Pb-3900series/Pb-3908.03/PB 3908.03 Marc and Sharon Sibilia - d\(4\) Variance \(ZB 22-02\).docx](https://burgis.sharepoint.com/sites/BurgisData/Shared Documents/W-DOCS/PUBLIC/Pb-3900series/Pb-3908.03/PB 3908.03 Marc and Sharon Sibilia - d(4) Variance (ZB 22-02).docx)



Dwg Title		Project No.	Date	Drawn By
FAR Map 2: Comparison to Proposed FAR		3908.03	02.08.22	DN
BURGIS ASSOCIATES, INC. COMMUNITY PLANNING LAND DEVELOPMENT AND DESIGN LANDSCAPE ARCHITECTURE 25 Westwood Avenue Westwood, New Jersey 07675 p: 201.666.1811 f: 201.666.2599		Project Title: 217 Washington Avenue d(4) FAR Variance Township of West Windsor Mercer County, New Jersey		Scale: 1" = 200'
				Dwg. No. map 02