

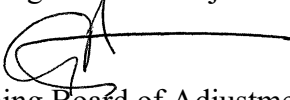
# MASON, GRIFFIN & PIERSON

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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: January 6, 2023

**Re: West Windsor Township Zoning Board of Adjustment - Paul Meers and Stacey Fox Use and Bulk Variance Application No. ZB22-05; Block 74, Lots 40 and 41 West Windsor Township Tax Map; 29 Berrien Avenue; R-1A Residential Zoning District**

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The West Windsor Township Zoning Board of Adjustment ("Board") will consider the above-referenced application at its meeting on February 2, 2023.

Paul Meers and Stacey Fox ("Applicants") propose removing an existing, detached carport and replacing that structure with a detached and separate "guesthouse" on their property located within Berrien City at 29 Berrien Avenue and designated as Block 74, Lots 40 and 41 on the West Windsor Township Tax Map ("Property").

The Property is located in the R-1A Residential Zoning District and is currently improved with the Applicants' single-family home and a carport. The Applicants represent that the carport is in poor condition and propose replacing this structure with a second detached dwelling unit. As set forth in the application materials, the Applicants are seeking to create additional living space on the Property for family members.

The new, proposed dwelling unit, in addition to the Applicants' existing single-family home is proposed to be two-stories. Within this structure there are two separate dwelling units

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consisting of a den, kitchenette, bathroom and bath, each unit having also a balcony area.

In order to implement this development plan on the Property, the Applicants seek the following variance relief:

- A. d(1) Use Variance: Within the R-1A Zoning District, Section 200-155A(1) limits development to one single-family detached dwelling unit on the Property. As indicated above, the Applicants propose maintaining their existing single-family home and adding the above-referenced detached structure which would contain two additional dwelling units.
- B. d(4) Floor Area Ratio Variance: Pursuant to Section 200-159F, the maximum permitted Floor Area Ratio ("FAR") in the R-1A zone is 13%. The Applicants have calculated that the current FAR on the Property is 13.7%. With the proposed addition of the new structure, the FAR would increase to 16.4%.
- C. c(1) Bulk Variances: Pursuant to Section 200-159.E(3), the side yard setback required in the R-1A zone is a minimum of 20 feet. The existing carport currently has a side yard setback of 11 feet and since the new, proposed structure would be built primarily on the existing carport footprint, this structure would also have an 11-foot side yard setback. Section 200-159.E(1) also requires a minimum of a 40-foot front yard setback from the Berrien Avenue right-of-way. The Applicant received a bulk variance from the Board on August 24, 2017, to permit the

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reconstruction of a porch on the front of their single-family home with an 11-foot front yard setback. Since the existing carport and proposed new structure sit further back on the Property, the Applicants should confirm that the new proposed structure will be set back at least 40 feet on the Property and will not require an additional bulk variance.

In evaluating this application, the Board should be guided by the following legal standards which are to be applied to the variance request:

- A. d(1) Use Variance: *N.J.S.A. 40:55D-70d(1)* permits the Board in particular cases and for special reasons, to grant a variance to allow departure from zoning regulations in order to permit a use or principal structure in a district restricted against such use or principal structure. In this case, in the R-1A Residential Zoning District, lots are allowed only to have one single-family detached dwelling unit located on the lot. In this case, the Applicants are seeking a second, detached structure which contains two additional dwelling units. Under Medici v. BPR Co., 107 N.J. 1 (1987), the New Jersey Supreme Court directed that in order for a Board of Adjustment to grant a use variance, the Applicant must show that "special reason" exist to allow the use in a zone in which such a use is not permitted. The Board can be satisfied that the Applicant met this burden of proof if the Applicant can persuade the Board that the use proposed will carry out a

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purpose of zoning or if the denial of the use variance application will impose an undue hardship on the Applicant. The Board must be further satisfied that approving the use variance will advance the general welfare of the Township because their Property is particularly well suited for the proposed use. The standard for obtaining approval for a use otherwise not permitted in the zone is intentionally a high one and the Applicant must present an "enhanced quality of proof", and the Board must find that the variance will not be inconsistent with the intent and purposes of the Township Master Plan and the zoning regulations for the R-1A Residential Zoning District. The Applicant must also reconcile why the proposed use (a second dwelling unit on the Property) is currently an omitted use in the R-1A Residential Zoning District. Proofs along these lines would be required to satisfy the "positive criteria" in order to qualify for the requested use variance. The other criteria which must be satisfied is the "negative criteria." This means that the Board must find that the variance to permit a second dwelling unit on the Property can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and the zoning regulations as envisioned for Berrien City. In evaluating this criteria, the Board needs to focus on the impact of the proposed use on the character of the neighborhood and in particular the impact on the most immediate properties

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adjacent to the Property.

- B. d(4) Floor Area Ratio (FAR) Variance: Under Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), the Applicant is also required to show "special reasons" for allowing more intense development on the Property than otherwise permitted by the FAR regulations. The Applicants must, however, demonstrate to the Board that their Property can accommodate any problems associated with a Floor Area Ratio greater than that permitted by the R-1A zoning regulations. Again, the Applicants must address the "negative criteria" and satisfy the Board that by allowing additional Floor Area Ratio on the Property due to the construction of the proposed second detached dwelling unit, there will be no substantial detriment to the public good and granting the variance relief will not substantially impair the intent and purpose of the zone plan for the Berrien City neighborhood wherein the Property is located. The Board should focus on the impact that the additional development and consequently the floor area involved with the development will have on any of the neighboring properties.
- C. c(1) Bulk Variance: Within the R-1A Residential Zoning District, the minimum lot area is 1 2/3 acres of land. From the survey submitted by the Applicants entitled "Existing Conditions", the lot area of the Property is 13,056 square feet for both lots 40 and 41. Consequently, the Property is extremely undersized for

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the zone and the proposed location of the new dwelling on the foundation of the existing carport is extremely close (11 feet) to the southerly boundary line.

Consequently, the Applicants are seeking a "hardship" bulk variance due to the undersized nature of the lot and the proposal to construct the new dwelling unit on the carport print. Under Nash v. Board of Adjustment of Morris Township, 96 N.J. (1984), the law requires, again, that the Applicants demonstrate to the Board's satisfaction both the positive and negative criteria. The positive criteria would involve having the Applicants show that there are peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the Applicants to satisfy all of the R-1A Residential Zoning District bulk standards due to the (a) exceptional narrowness, shallowness or shape of their specific piece of Property, or (b) by reason of exceptional topographic conditions or physical features uniquely effecting their Property, or (c) by reason of an extraordinary and exceptional situation uniquely effecting their Property for the structures lawfully thereon that they are unable to locate the proposed new structure on the Property in a way that meets all of the zoning bulk regulations.

Finally, the Board in order to grant the two use variances sought by the Applicants, any approval would require a positive vote by five of the seven members of the Board.

cc: (via email):

Samuel J. Surtees, West Windsor Township Land Use Manager

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Patricia Thompson, Zoning Board of Adjustment Secretary

David Novak, PP, Burgis Associates, Inc., Board Planning Consultant

Daniel Dobromilsky, CLA, Board Landscape Architect

Ian Hill, PE, Van Cleef Associates, Board Engineering Consultant

Paul Meers and Stacey Fox, Applicants