


# 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 11, 2023

**Re: West Windsor Township Zoning Board of Adjustment - Nathan and Alison Prussing: Use and Bulk Variance Application No. ZB22-06; Block 11.01, Lot 17 West Windsor Township Tax Map; 976 Alexander Road; 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.

Nathan and Alison Prussing ("Applicants") propose improving their existing single-family home located at 976 Alexander Road and designated as Block 11.01, Lot 17 on the West Windsor Township Tax Map ("Property") by constructing a second floor addition over their existing one-story, ranch style home. The Property is located in the R-1A Residential Zoning District.

The proposed addition would allow the Applicants to reorganize the internal layout of their home. Currently, the first floor consists of 1,428 square feet of living space and contains three bedrooms. The new, proposed second floor would consist of 1,212 square feet and consist of three new bedrooms and a media room with master bedroom remaining on the first floor.

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In order to implement the Applicants' home improvement project, two variances are required.

Section 200-159.F. permits a maximum Floor Area Ratio ("FAR") in the R-1 Residential Zoning District of 13%. The Applicants' current home has an FAR of 11.90%. With the proposed addition, the Property would have a 22.10% FAR. The Applicants, therefore, would need a d(4) FAR variance. Section 200-159.G. permits a maximum improvement coverage in the zone of 17%. The current coverage on the Property is 28.38%. With the addition that would increase to 29.33%. For this increase a c(2) bulk variance is required.

To obtain the use variance for the additional FAR, Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994) requires an applicant to show that there are "special reasons" that support the deviation from the zoning district FAR regulations. The Applicants must demonstrate to the Board's satisfaction that their Property will accommodate any problems associated with a Floor Area Ratio larger than that permitted by the zoning regulations.

Additionally, the Applicants must satisfy the Board that the "negative criteria" has been met which means that approving the second floor addition to the Applicants' home can be granted without a substantial detriment to the public good and without substantially impairing the intent and purpose of the R-1A zone plan for that section of Alexander Road wherein the Property is located. The negative criteria focuses primarily on whether or not approving the variance relief would have a substantial negative impact on any of the neighboring properties.

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For the maximum improvement coverage bulk variance sought, the Board can apply the c(2) "flexible" bulk variance standards. In evaluating this element of the application, Jacoby v. Englewood Cliffs Zoning Board of Adjustment, 442 N.J. Super. 450 (App. Div. 2015) indicates that the Applicants must satisfy the Board that granting the bulk variance relief would be consistent with the principals of the New Jersey Municipal Land Use Law; that the variance can be granted without substantial detriment to the public good; that the benefits of the deviation from the improvement coverage requirement would substantially outweigh any detriment and that granting this variance relief would not substantially impair the intent and purpose of the zone plan for the R-1A neighborhood wherein the Property is located. The Board must be satisfied that granting this variance relief would actually present a better zoning alternative for the Applicants' Property (see Kaufmann v. Planning Board for Warren Township, 110 N.J. 551 (1988)).

The d(4) FAR variance will require five affirmative votes of the seven-member Board if it is to be approved.

cc: (via email):

Samuel J. Surtees, West Windsor Township Land Use Manager

Patricia Thompson, Zoning Board of Adjustment Secretary

Daniel Dobromilsky, CLA, Board Landscape Architect

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

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

Mr. and Mrs. Nathan Prussing, Applicants