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MEMORANDUM

To: West Windsor Township Zoning Board of Adjustment

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

Date: June 27, 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: FINAL REVISED PLANS**

The West Windsor Township Zoning Board of Adjustment ("Board") will continue the hearing on the above-referenced application at its meeting on July 6, 2023. The Board conducted initial hearings on this application at your meetings on April 6, 2023, and June 1, 2023.

Following the June 1, 2023 hearing, the applicants further revised their plans for the replacement of their existing carport with a new detached structure on the carport footprint. They also revised their architectural plans to propose the construction of a 370.44± square foot garage on the first floor level and on the second level a 360± square foot living area consisting of an office/guest room, a meeting/TV room and a bathroom. There are no kitchen facilities proposed on the second floor.

As a result of the preparation of these final architectural plans, the FAR changes from the existing 13.7% to 16.4% permitted FAR in the R-1A zone is 13%. A new survey was also prepared and submitted with the final architectural plans. From that survey, it is clear that the existing garage to be replaced has a side yard setback of 9.8 feet and not 11 feet as originally

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proposed by the applicant.

With the reconfiguration of the second floor, and in reviewing the definition of "dwelling unit" in Section 200-4, I am of the opinion that the second floor of the structure does not meet the definition of dwelling unit. Consequently, a d(1) use variance is no longer necessary to permit two (2) separate dwelling units on one lot. Consequently, the FAR d(4) use variance and the aforementioned side yard bulk variance are still needed by the applicant for their proposed construction plans.

The final revised architectural renderings make a reference to the second floor having one of the rooms be an "office" and another room being a "meeting" place. Under Section 200-232B, if this space was intended to be used by a family member, the space does not qualify as a "home occupation" since home occupations can only take place within "dwelling units" and the proposed addition does not qualify as a dwelling unit for the reasons set forth hereinabove.

The applicant should be prepared to explain to the Board why a reference has been made on the final architectural plans and renderings for using the space as an "office" adjacent to another space designated as a "meeting" area. Office use is not a permitted use in the R-1A residential zoning district.

Once again, I will indicate that the variance relief outlined in my initial January 6, 2023 memorandum for FAR and the bulk variance are still required for the applicant's plans and the

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standards set forth in my earlier memorandum need to be applied in deciding this variance application.

cc: *(via email)*:

Samuel J. Surtees, West Windsor Township Land Use Manager

Patricia Thompson, Zoning Board of Adjustment Secretary

David Novak, PP, AICP, Burgis Associates, Inc.

Daniel Dobromilsky, CLA, Board Landscape Architect

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

Paul Meers and Stacey Fox, Applicants

Richard Schkolnick, Esq., Applicant's Attorney

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