

COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
A S S O C I A T E S , I N C .

Principals:
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MEMORANDUM

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

From: David Novak PP, AICP

Subject: Paul Meers and Stacey Fox
d(1) Use Variance, d(4) Floor Area Ratio Variance, c Variance Relief
Block 74 Lots 40 and 41
29 Berrien Avenue

Date: January 16, 2023

BA#: 3908.20

WWT#: 22-05

Introduction

The applicant, Paul Meers and Stacey Fox, has submitted an application seeking “d(1)” use variance relief, “d(4)” floor area ratio (FAR) relief, and “c” variance relief to replace an existing carport with a guest house. The site, which is identified by municipal tax records as Block 74 Lots 40 and 41, is located at 29 Berrien Avenue in the R-1A Low Density Residential District.

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

1. Architectural plan of guest house.
2. Existing condition plan.
3. Property record card.
4. Copy of tax map.
5. Aerial map and site photographs.
6. Zoning Board Resolution of Approval dated August 24, 2017.

Property Description

The subject site is located in the north-central portion of the Township, near the intersection of Berrien Avenue and Montgomery Street. The site has an area of approximately 13,056 square feet (0.2997 acres) and is rectangular in shape. The northwesterly front portion of the site is developed with an existing dwelling which, as per both Township tax records and the submitted application materials, has an area of 1,788 square feet. A carport is located to the southeast of the existing dwelling and is connected to Berrien Ave via a driveway. Other improvements consist of a front porch which received "c" variance relief in 2017, a patio, and a shed.

Surrounding land uses consist predominantly of single-family dwellings. 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 demolish the existing carport and to construct a two-story guesthouse in its place. The first floor of the guesthouse will contain a bedroom, bathroom, kitchenette, den, and a deck. The second floor will also contain a bedroom, bathroom, kitchenette, den, and a deck. Access to the second floor is to be provided by an exterior covered staircase. The proposed guesthouse will comprise a footprint of approximately six hundred square feet. Its height will range from 16.6 feet to 18.4 feet.

Master Plan

As per the 2020 Land Use Plan, the site is located in the Berrien City land use category. The 2020 Plan notes that this land use category recognizes the unique development patterns of the Berrien City area and Princeton Junction. Throughout the 1920s and 1930s, this neighborhood was subdivided into multiple lots, some of which were as small as 5,000 square feet. As was the custom during those times, families would purchase multiple lots depending on their budget and their anticipated household size. As a result, the lot sizes throughout the neighborhood vary greatly in size and shape. The 2020 Plan found that residential lot sizes in Berrien City are typically approximately 10,000 square feet in size; however, nearly thirteen percent of all residential properties in this community have lot sizes of less than 7,500 square feet.

The 2020 Plan indicates that Berrien City is located in the R-1A District which refers to the use, bulk, and area regulations of the R-1/C District. The R-1/C District establishes a minimum lot size of one and two-thirds acre for conventional residential developments. Nevertheless, no residential lot within Berrien City meets this area requirement.

Therefore, the 2020 Plan establishes that the main intent of the Berrien City land use category is two-fold: to recognize and preserve the existing, historic, and unique development pattern of the Berrien City community while also adequately addressing the reasonable expectations of homeowners in regard to modern home improvements.

The 2020 Plan recommends that the Township review the existing development patterns in this community in order to develop new and responsive zoning standards which are more reflective of the area’s existing development patterns. These standards should address the potential of tear-downs of the existing housing stock with significantly larger dwellings which may be out of character with the surrounding neighborhood. It is envisioned that all new residences constructed in Berrien City be developed at a scale that is relatively similar to the existing housing in the area. As such, the 2020 Pan notes that the Township may wish to investigate the propriety of a form-based code which would allow homeowners to upgrade their properties while still maintaining the established character of the area

Zoning

The site is located in the R-1A Residence District. The following table outlines the zoning regulations for this district and the applicant’s compliance with those standards.

Table 1: R-1A Resident District Bulk Standards

Area & Bulk Regulations	R-1A	Existing	Proposed	Section
Minimum Lot Area (sf)	1 ⅔	(ex) 0.2997	(ex) 0.2997	200-159A.
Minimum Lot Frontage (ft)	85	(ex) 72.00	(ex) 72.00	200-159B.
Minimum Lot Width (ft)	175	(ex) 72.00	(ex) 72.00	200-159C.
Min. Lot Depth (ft)	175	181.00	181.00	200-159D.
Minimum Front Yard (ft)	40	(app) 11.00	(app) 11.00	200-159E.(1)
Minimum Rear Yard (ft)	20	> 20.00	> 20.00	200-159E.(2)
Minimum Side Yard (ft)	20	(ex) 11.00	(V) 11.00	200-159E.(3)
Maximum FAR (%)	13	(ex) 13.70	(V) 16.40	200-159F.
Max. Improvement Cov. (%)	17	Not Specified	Not Specified	200-159G.
Max. Building Height (st/ft)	2.5/35	Not Specified	Not Specified	200-159H.

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

Variance Relief

The following is noted regarding variance relief.

“d(1)” Use Variance Relief

The applicant has requested variance relief pursuant to NJSA 40:55D-70d.(1) of the Municipal Land Use Law (MLUL) for a use or principal structure in a district restricted against such use or principal structure. An applicant requesting a “d” variance must demonstrate that special reasons exist for the granting of the variance, and that the granting of such variance will further the purposes of the MLUL (positive criteria). In addition, the applicant must prove that there will be no substantial detriment to the public good and no substantial impairment to the intent of the Master Plan. For a non-inherently beneficial use, the applicant has an enhanced burden of proof to demonstrate that the site is particularly suited for the use, and that the use is not inconsistent with the Master Plan’s intent.

We recommend that the discussion of the proposed use consider recent trends regarding accessory dwelling units throughout the state, which have increased in popularity over the years due to rising housing costs and aging-in-place efforts.

“d(4)” Floor Area Ratio (FAR) Variance Relief

The applicant has requested variance relief pursuant to N.J.S.A. 40:55D-70.d(4) of the MLUL for exceeding the permitted FAR. The R-1A District establishes a maximum FAR of thirteen percent which equates to approximately 1,697 square feet for the subject site, whereas the applicant has proposed a FAR of 16.4% which equates to approximately 2,141 square feet.

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.

“c” Variance Relief

The applicant requires variance relief pursuant to N.J.S.A. 40:55D-70c.(1) and/or (2) of the Municipal Land Use Law (MLUL) for the proposed setback of the guesthouse. Both the R-1A District and Section 200-226A.(2) which pertains to accessory structures require a side yard setback of twenty feet, whereas the proposed guesthouse has a setback of eleven feet.

The statute provides two approaches to (c) variance relief, commonly referred to as the “physical features” test and the “public benefits” test.

1. 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.
2. 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.

Planning and Zoning Review

We offer the following for the Board's consideration.

Calculation of Floor Area Ratio (FAR)

As previously noted, 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 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.

Improvement Coverage

Section 200-159G. establishes a maximum improvement coverage of seventeen percent for the R-1A District. This equates to approximately 2,219 square feet of permitted coverage on the site. The applicant should identify whether the proposed coverage will match the existing coverage, or whether any increase in improvement coverage is proposed.

Proposed Guest House

As noted in the submittal materials, the guest house is anticipated to be utilized by the applicant’s children and elderly parents for holidays as well as year-round. We note that both the first and second floors of the guesthouse are to feature a bedroom, bathroom, kitchenette, den, and a deck. Furthermore, access to the second floor is to be provided by an exterior covered staircase.

The applicant and the Board should discuss whether the guesthouse should be treated as two separate residential spaces (one on the first floor, one on the second floor) which can function independently of one another. The applicant and the Board should also discuss the future utilization of this guesthouse, and whether it can be rented to the general public at a later date.

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.

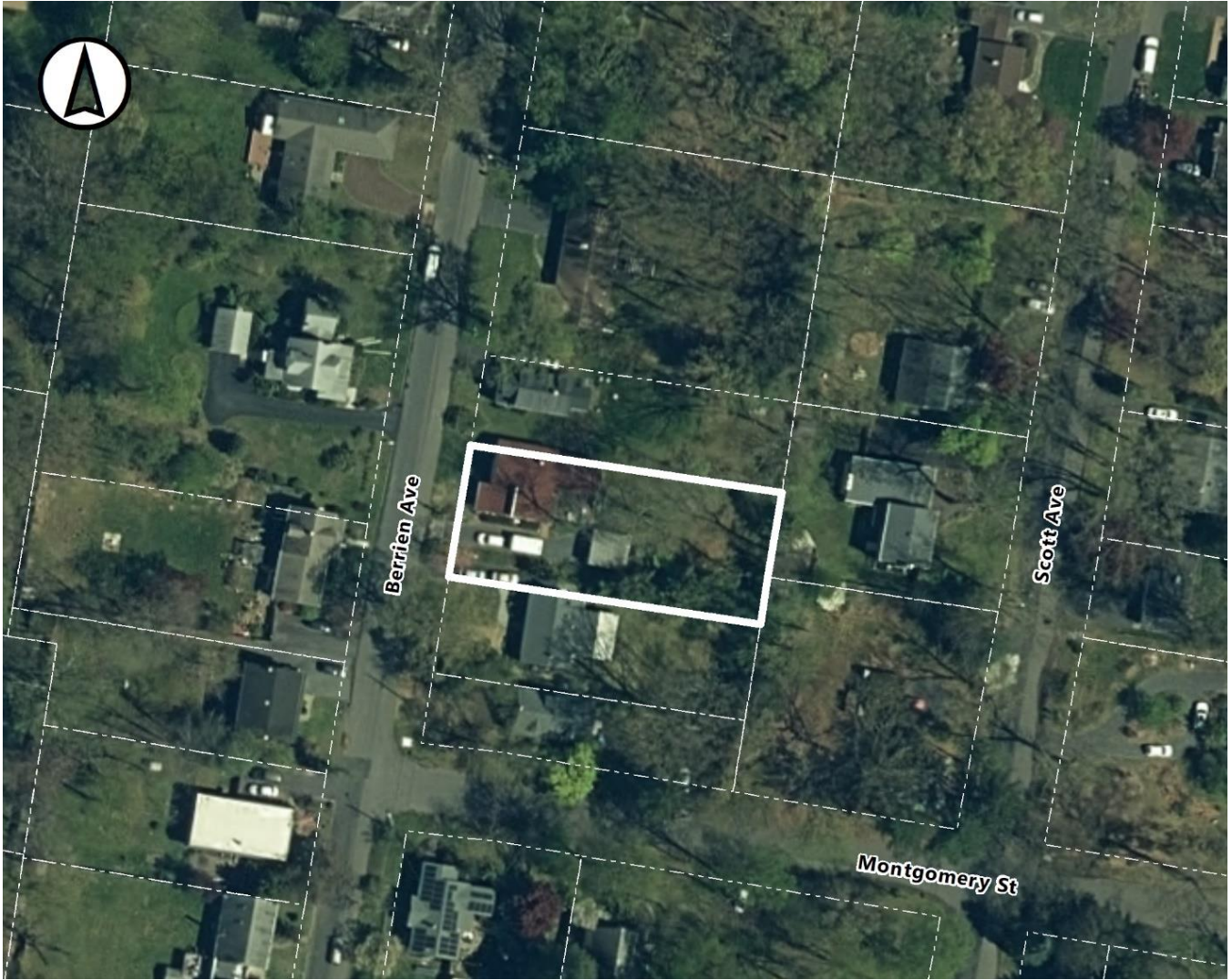
Comparison to Neighborhood

A table as well as two maps have been provided with this memorandum which respectively identify those dwellings within the vicinity which exceed the FAR standards established by the R-1A District, as well as those which exceed the proposed FAR of the subject site. This information was based upon publicly available tax information. As shown, thirteen properties in the area presently exceed the FAR permitted by the R-1A District, while six properties exceed the FAR proposed by the applicant.

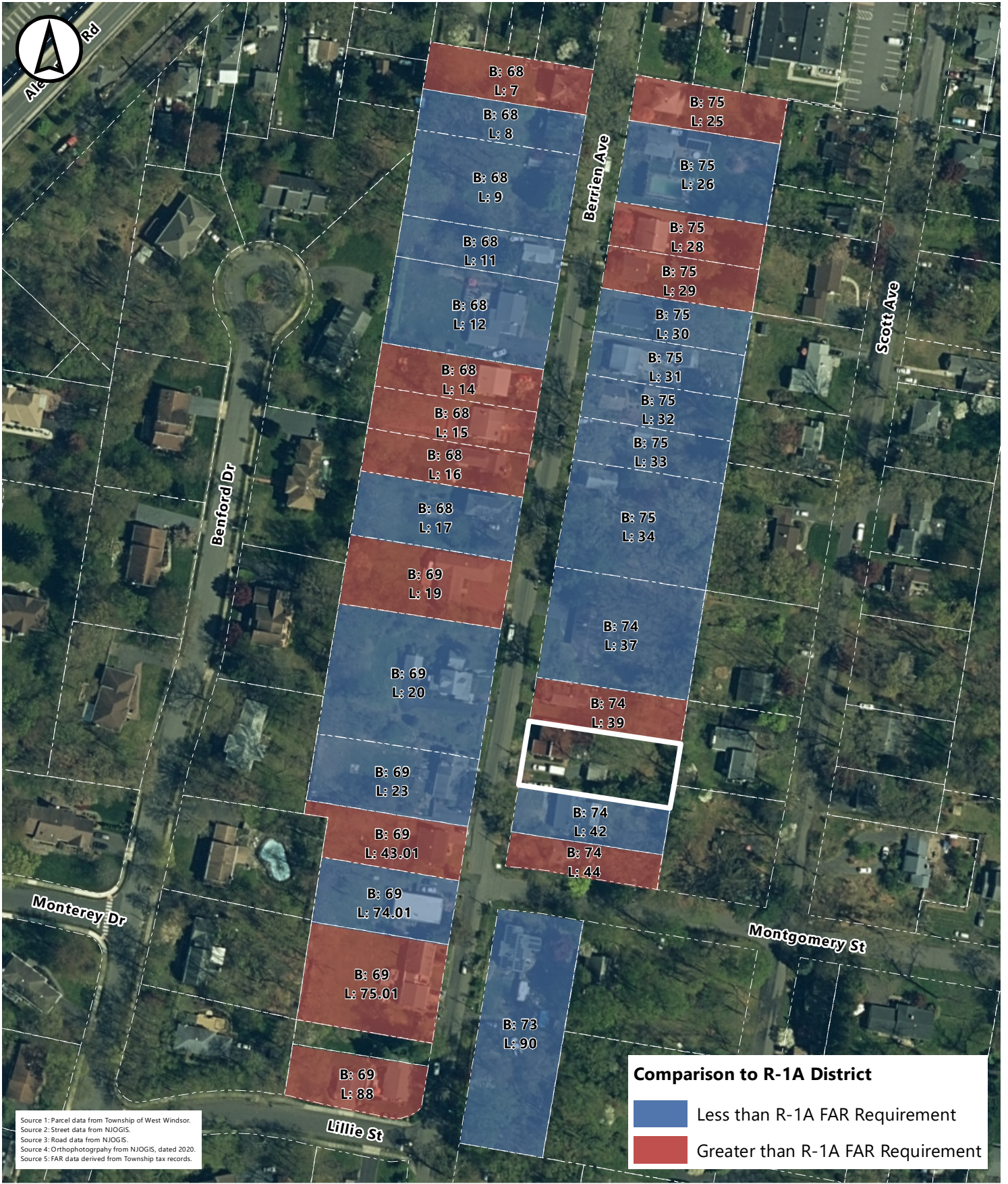
Table 2: FAR Analysis

Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
68	7	4 Berrien Ave	9,147.6	1,278.0	13.97%	Yes	No
68	8	6 Berrien Ave	9,051.8	1,040.0	11.49%	No	No
68	9	8 Berrien Ave	18,099.2	796.0	4.40%	No	No
68	11	12 Berrien Ave	9,064.8	714.0	7.88%	No	No
68	12	14 Berrien Ave	18,295.2	1,712.0	9.36%	No	No
68	14	16 Berrien Ave	9,051.8	1,245.0	13.75%	Yes	No

Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
68	15	18 Berrien Ave	9,064.8	1,659.0	18.30%	Yes	Yes
68	16	20 Berrien Ave	9,064.8	1,481.0	16.34%	Yes	Yes
68	17	22 Berrien Ave	13,599.4	1,692.0	12.44%	No	No
69	19	24 Berrien Ave	13,573.3	1,814.0	13.36%	Yes	No
69	20	28 Berrien Ave	27,150.9	1,636.0	6.03%	No	No
69	23	32 Berrien Ave	15,202.4	1,536.0	10.10%	No	No
69	43.01	34 Berrien Ave	11,321.2	2,589.0	22.87%	Yes	Yes
69	74.01	34.A Berrien Ave	12,101.0	1,458.0	12.05%	No	No
69	75.01	36 Berrien Ave	18,730.8	3,108.0	16.59%	Yes	Yes
69	88	40 Berrien Ave	10,301.9	1,393.0	13.52%	Yes	No
75	25	3 Berrien Ave	9,152.0	1,308.0	14.29%	Yes	No
75	26	5 Berrien Ave	18,134.0	1,320.0	7.28%	No	No
75	28	9 Berrien Ave	9,064.8	1,536.0	16.94%	Yes	Yes
75	29	11 Berrien Ave	9,051.8	1,312.0	14.49%	Yes	No
75	30	13 Berrien Ave	9,051.8	918.0	10.14%	No	No
75	31	15 Berrien Ave	9,051.8	840.0	9.28%	No	No
75	32	17 Berrien Ave	9,069.2	900.0	9.92%	No	No
75	33	19 Berrien Ave	9,051.8	1,058.0	11.69%	No	No
75	34	21 Berrien Ave	22,215.6	1,546.0	6.96%	No	No
74	37	25 Berrien Ave	22,668.6	1,322.0	5.83%	No	No
74	39	27 Berrien Ave	9,051.8	1,635.0	18.06%	Yes	Yes
74	42	31 Berrien Ave	11,242.8	1,260.0	11.21%	No	No
74	44	41 Montgomery Street	7,788.5	1,449.0	18.60%	Yes	Yes
73	90	40 Montgomery Street	26,541.1	1,138.0	4.29%	No	No



Map 1: Aerial of Subject Site (scale: 1" = 100')



Source 1: Parcel data from Township of West Windsor.
 Source 2: Street data from NJOGIS.
 Source 3: Road data from NJOGIS.
 Source 4: Orthophotography from NJOGIS, dated 2020.
 Source 5: FAR data derived from Township tax records.

Dwg. Title: FAR Map 1: Comparison to R-1A FAR Requirement

Project No.	Date	Drawn By
3908.20	12.27.22	DN



Source 1: Parcel data from Township of West Windsor.
 Source 2: Street data from NJOGIS.
 Source 3: Road data from NJOGIS.
 Source 4: Orthophotography from NJOGIS, dated 2020.
 Source 5: FAR data derived from Township tax records.

Dwg. Title	Project No.	Date	Drawn By
FAR Map 2: Comparison to Proposed FAR	3908.20	12.27.22	DN

<p>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</p>	Project Title:	Scale:	Dwg. No.:
	29 Berrien Avenue Variance Application	1" = 150'	map 02

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