



H2M Associates, Inc.

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September 28, 2023

Via Email

Ms. Wendy Parrinello
Board of Adjustment
Township of Mendham
2 West Main Street
Brookside, New Jersey 07926

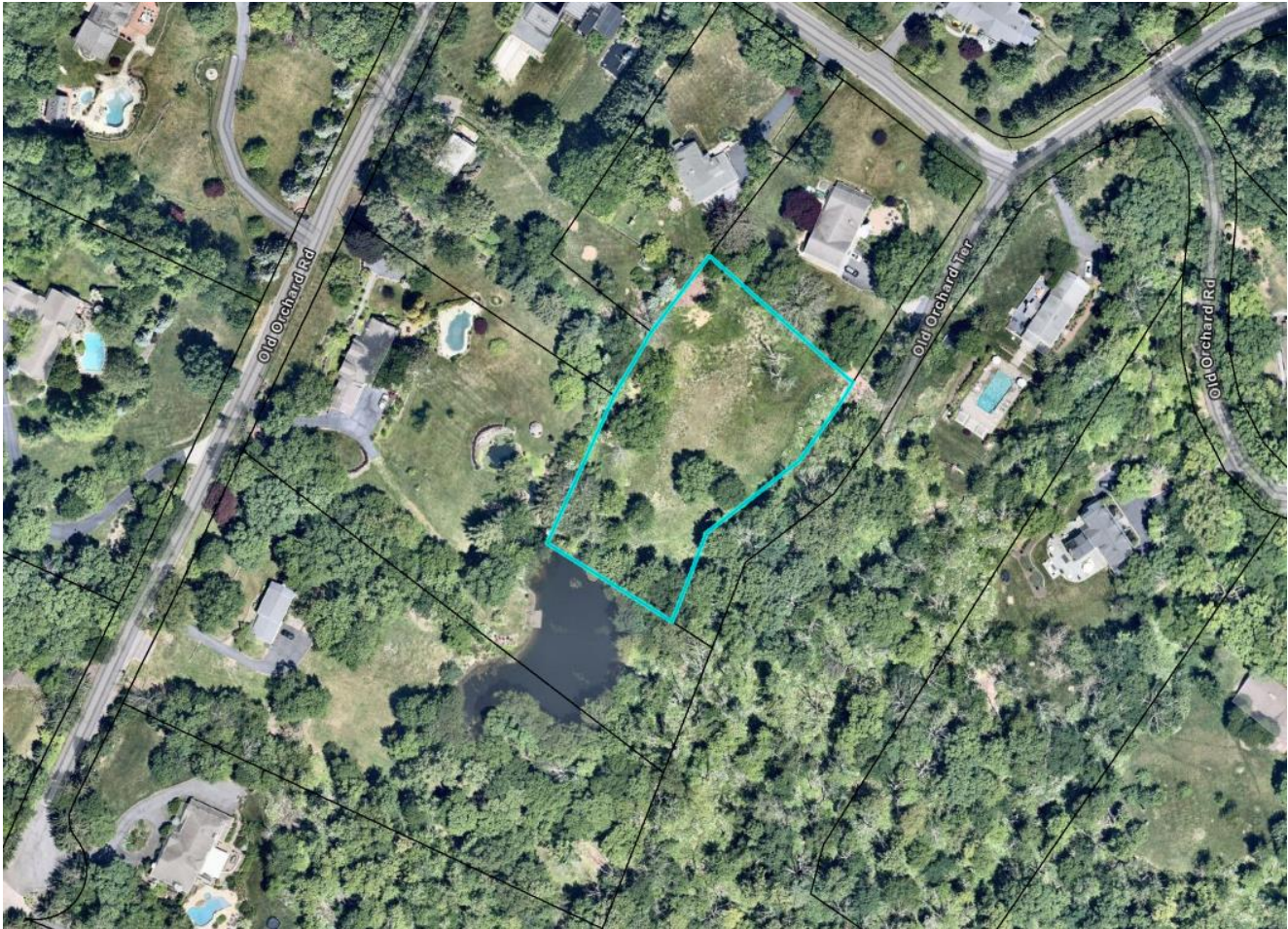
**Re: Kenigel/Zarou Residential Construction
F.A.R. (d-4) and Bulk (c) Variance
Block 127, Lot 119
3 Old Orchard Terrace
BOA
H2M Project No.: MENT2301**

Dear Chairman and Board Members:

In preparation of this review letter, I have reviewed all application materials, reviewed the Township Land Use Ordinance and Master Plan and visited the site. H2M reserves the right to continue to review and provide additional technical comments as the application progresses through the process.

I am in receipt of the following items submitted in connection with this application:

- The fully completed Application Package, including:
 - Project Proposal
 - Checklist
 - Tax certificate from the Township of Mendham Tax Collector
 - Certified Property owner list from the Township of Mendham Tax Assessor
 - Form #10 FAR Calculations
- NJ Department of Environmental Protection Freshwater Wetlands Letter of Interpretation
- Township of Mendham Board of Adjustment Resolution Case Number 8-00, dated December 14, 2000
- Architectural Elevation and Floor Plans prepared by Feldman & Feldman Architects, dated June 14, 2023
- Variance and Lot Grading Plans prepared by Yannaccone Villa & Aldrich, LLC, dated June 16, 2023, revised September 19, 2023.

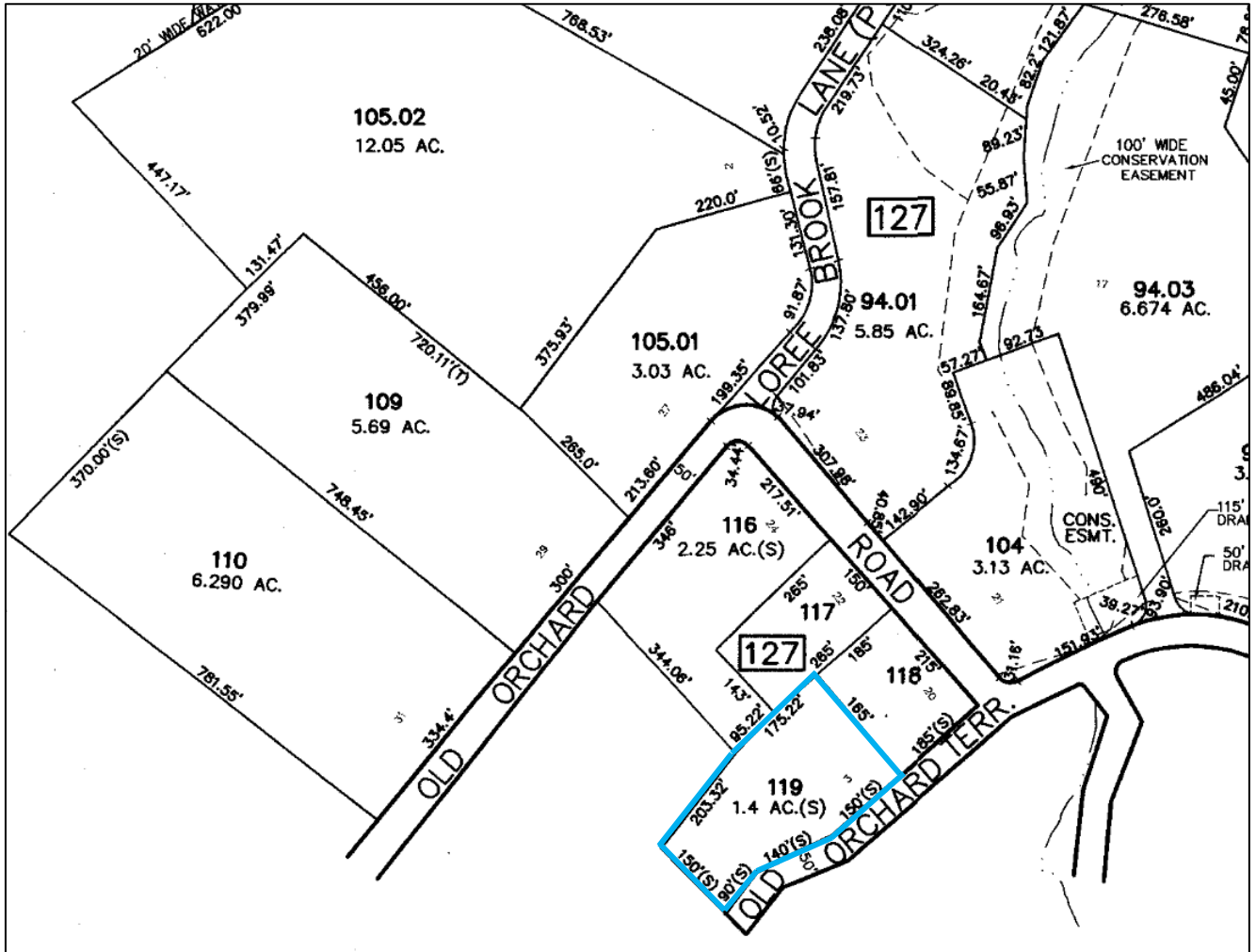


PROJECT OVERVIEW

The applicant is submitting an application for a FAR (d-4) variance to exceed the maximum floor area permitted and one “c” variance to permit the undersized lot area permitted on the property located at 3 Old Orchard Terrace designated as Block 127, Lot 119 on the tax map of the Township of Mendham, New Jersey. The property is located in the Township’s R-3 Zoning District. The applicant is proposing to construct a two-story, four (4) bedroom, 5,789 square foot single-family dwelling and install a pool, patio, chain link fence, driveway, septic tank and wastewater treatment system, and site improvements.

As discussed further in the **Variations** section of this report, the lot area is approximately 1.68 acres, while lots in the R-3 zone are required to have a minimum lot size of three acres. It should be noted that this property was the subject of a Board of Adjustment resolution in 2000 that granted a variance, permitting the construction of a single-family dwelling on the undersized lot. The dwelling was never constructed, and the variance subsequently expired. Further, the maximum allowable floor area is 5,462.8 square feet where the construction proposed is 5,789 square feet. Additionally, the Mendham Township Land Development Ordinance permits a maximum disturbance of 25% with slopes of 10-15% where the applicant proposes 58.4%, a maximum disturbance of 15% with slopes of 15-25% where the applicant proposes 60.4%, and a maximum disturbance of 5% with slopes more than 25% where the applicant proposes 69.9%. The applicant requires a waiver for these deviations from the ordinance. According to the application, previous improvements have been removed from the ground, which left unstable slopes that the aforementioned slope disturbances intend to remedy.

Block 127, Lot 119 on Township of Mendham Tax Map



APPLICATION VARIANCES AND WAIVERS

Ordinance Requirement	Required	Existing	Proposed	Status
Minimum Lot Area	3 acres	1.68 acres	1.68 acres	Requires "c" variance
Minimum Front Yard Setback	60 + 15 feet ¹	N/A	78.9 feet	<i>Compliant</i>
Minimum Side Yard Setback	50 + 15 feet ¹	N/A	89.3 feet	<i>Compliant</i>
Minimum Rear Yard Setback	50 + 15 feet ¹	N/A	65.1 feet	<i>Compliant</i>
Minimum Accessory Rear Yard Setback (Pool)	50 feet	N/A	50.6 feet	<i>Compliant</i>
Maximum Height Principal Structure	35 feet	N/A	34.73 feet	<i>Compliant</i>
Minimum Lot Frontage	100 feet	387.55 feet	387.55 feet	<i>Compliant</i>
Maximum Floor Area Ratio	5,462.8 sqft ²	N/A	5,789 sqft	Requires d(4) variance
Land Disturbance Slope Category 0% - 10%	No Limit	N/A	55.8%	<i>Compliant</i>
Maximum Land Disturbance Slope Category 10% - 15%	25%	N/A	58.4%	Requires waiver
Maximum Land Disturbance Slope Category 15% - 25%	15%	N/A	60.4%	
Maximum Land Disturbance Slope Category 25%+	5%	N/A	69.6%	

1. In the R-3 zone, the minimum setback of a structure with a height more than twenty (20) feet shall increase by one (1) foot for each one (1) foot of height the structure exceeds twenty (20) feet.
2. The formula for determining the maximum floor area ratio is 2,600 square feet + (1,700 square feet X the lot acreage).

VARIANCE COMMENTS

1. **D(4) FAR Variance** – The applicant is proposing to build single-family dwelling with a floor area of 5,789 square feet on Block 127, Lot 119. The Township’s formula for determining the maximum floor area of a structure is the maximum permitted floor area of 2,600 square feet plus (1,700 square feet times the lot acreage). Since the lot in question is approximately 1.68 acres, the maximum permitted floor area is 5,462.8 square feet. Consequently, the applicant must be granted a d(4) variance for exceeding the maximum permitted floor area by 326.2 square feet. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review. For a Board to consider an application for a d(4) variance, the applicant has to satisfy both the positive and negative criteria.

Positive Criteria: To satisfy the positive criteria, also known as “special reasons”, for variance relief pursuant to NJSA 40:55D-70(d)(4) the stringent *Medici* standards are not applicable but instead controls established by *Coventry Square v. Westwood Zoning Board of Adjustments* are applicable. The applicant need not show that the site is particularly suited for a more intense development but rather that the site will accommodate the problems associated with an FAR larger than that permitted by the ordinance.

Testimony should be provided how the application for variance:

- A. Promotes purposes of MLUL
- B. Promotes purposes of Master Plan
- C. Promotes purposes of SDRP

Negative Criteria: Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan. Impact to the public good, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. Substantial detriments are usually nuisances related such as noise, dust, trash, parking, traffic, visual distraction, light and aesthetics that cannot be adequately mitigated. The applicant should address any impacts to the character of the neighborhood resulting from the proposed single-family home that exceeds the permitted FAR.

- A. Will not cause a substantial detriment to the public good.
- B. Impacts on the surrounding properties and the character of neighborhood should be evaluated.
- C. Will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

The applicant shall provide testimony regarding the reasons for not complying with the FAR requirement.

2. **Bulk and Area Variances “c” variances** – The applicant requires **one (1)** bulk and area variance as outlined in the Variances table on page 4. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the “c” variance when bulk variances are sought with variance relief pursuant to NJSA 40:55D-70(c).

Positive Criteria. The applicant bears the burden of proof (which is divided into two parts – positive criteria and negative criteria) in the justification of the “c” variance. To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:

- A. By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- B. By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- C. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

The applicant should provide testimony regarding any peculiar and exceptional practical difficulties or exceptional and undue hardship if seeking c(1) variance relief for the proposed variance.

Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:

- A. Where in an application or appeal relating to a specific piece of property the purposes of the Act (N.J.A.C. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
- B. The applicant should provide testimony regarding any public benefits of the project if seeking c(2) variance relief.

Negative Criteria. Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.

- A. Negative Criteria: Impact to the public good. Impact to the public good, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. The applicant should provide testimony regarding any potential negative impacts to the character of the neighborhood resulting from the proposed variance relief and any proposed mitigation measures to reduce potential negative impacts to the public good.
- B. Negative Criteria: Impact to the zone plan. In considering the potential negative impacts to the zoning ordinance and zone plan, the Board should consider potential impact of the variance on the zoning standards of the R-3 zone.
- C. The Board should consider the extent to which the variance may result in any substantial impairment of the intent and purpose of R-3 zone.

Other Planning Comments

1. Access to the proposed single-family home appears to be off a private drive shared with Block 127, Lot 118. Testimony should be provided regarding the responsibility of maintenance of the shared road and if there is any intention on increasing the width of the private road.
2. The applicant shall demonstrate through testimony that the proposed project advances the intent of the Township's Master Plan.
3. The applicant shall demonstrate through testimony that the site will accommodate a floor area larger than what is permitted by the ordinance.
4. The applicant shall demonstrate through testimony that the proposed conditions are consistent with the overall fabric of the existing neighboring properties.

H2M reserves the right to provide additional comments as we continue through the review of this application. If you have any further questions regarding the above letter, please contact the undersigned at (862) 207-5900 extension 2232.

Very truly yours,

H2M Associates, Inc.



Paul Cancilla, PP, AICP
Staff Planner 2

cc: Dennis F. Keenan, P.E. (email only)
Anthony Sposaro, Esq. (email only)