

# TOWNSHIP OF MIDDLETOWN

## Zoning Board of Adjustment and Appeals

1 Kings Highway  
Middletown, NJ 07748-2594

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### TECHNICAL MEMORANDUM

**DATE:** March 17, 2022  
**BOARD:** Zoning Board of Adjustment and Appeals  
**APPLICATION:** Heal (#2021-019)  
11 Grand Tour (Block 782, Lot 6)  
R-110 Zone  
Floor Area Ratio "D4" Use Variance, Bulk "C" Variance

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### PROJECT DESCRIPTION & VARIANCE SUMMARY

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The applicant is proposing a 1,620 square feet addition to an existing single family home. The house addition includes a 1-story front porch, entry foyer and two-car garage at the front; two-story master bedroom suite and two additional bedrooms in the basement; alteration of an existing elevated deck to be converted to a screened porch at the rear; and additional alterations to the interior. Other proposed improvements include an in-ground pool with a surface water area of 800 square feet and modest walkway around the perimeter of the pool in the rear yard; and 1,070 square feet relocation and expansion of the existing driveway to accommodate the proposed addition.

The following variance relief is required to accommodate the proposal:

- A Floor Area Ratio (FAR) "D4" Use Variance, pursuant to NJSA 40:55D-70D(4), is required for an increase in the maximum permitted FAR where 0.1 FAR is proposed and 0.07 is the maximum permitted; and
- Bulk "C" variance relief is required for rear yard setback for the principal building where 63.88 ft. is proposed and 75 ft. is the minimum required.

The subject property contains the following existing non-conforming conditions:

- Lot area where 110,000 square feet is required and 53,709.48 square feet exists;
- Lot frontage where 250' is required and 233.33' exists;
- Front setback where 75' is required and 74.1' exists; and
- Rear setback where 75' is required and 72.85' (dwelling) exists.

### **Many Neighborhoods. One Middletown!**

Belford ◊ Chapel Hill ◊ Fairview ◊ Harmony ◊ Leonardo ◊ Lincroft ◊ Locust ◊ Middletown Village  
Monmouth Hills ◊ Navesink ◊ New Monmouth ◊ North Middletown ◊ Nut Swamp ◊ Oak Hill ◊ Port Monmouth ◊ River Plaza

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## PROPERTY DESCRIPTION, ZONING AND SURROUNDING LAND USES

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The subject property is situated on an undersized lot in the R-110 zone that adheres to R-45 standards for building and lot coverage. The property maintains frontage on Grand Tour Road and is surrounded by other single-family dwellings in the R-110 zone.

The subject property contains a 1-story, 3,748 square feet single family dwelling and driveway.

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## PLANNING COMMENTS

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### 1. Use “D” Variance – Floor Area Ratio (FAR)

The maximum permitted FAR in the R-110 zone is 0.07 where 0.1 is proposed. A Use “D4” variance is required. The subject lot is undersized for the R-110 Zone where 53,709.48 square feet where a minimum lot size of 110,000 square feet is required.

The applicant must demonstrate to the Board if the “D” Variance request passes both the “positive” and “negative” criteria tests.

Based on the Case Opinion of the NJ Superior Court (App.Div.1999) in Randolph Town Center Associates, L.P. v. Township of Randolph, it is appropriate to use the variance standard established in Coventry Square Inc. v. Westwood Zoning Bd. of Adjustment, 138 NJ 285 (1994) when providing testimony because, similar to conditional uses that are “conditionally” permitted, FAR variances deal with “permitted” uses. The applicant does not have to demonstrate “special reasons” or that the site is particularly suited for more intensive development because single family dwellings are permitted uses in the R-110 Zone. Instead the “positive criteria” is somewhat relaxed, not satisfied. The applicant must be able to demonstrate to the Board that the site will accommodate the problems associated with a FAR larger than what is permitted by ordinance. The applicant must demonstrate to the Board how potential impacts of the proposed increase in development will be resolved.

Regarding the negative criteria, the Board must be assured that granting a variance for more intensive development will not present a substantial detriment to the public good, specifically cause any negative impact to the surrounding area, and will not substantially impair the purpose or intent of the Master Plan and Zoning Ordinance.

The Board should employ a “balancing test” between the positive and negative criteria – and the required Bulk “C” variance, as described in the section below, should be given the appropriate weight.

### 2. Bulk “C” Variance

- Rear Yard Setback – A rear yard setback of 63.88 feet is proposed for the principal dwelling where 75 ft. is the minimum required.

### **Statutory Requirements for the granting of bulk variance relief**

Based on the Municipal Land Use Law standard for granting bulk variance relief, the applicant shall indicate to the Board whether a “hardship” variance or “flexible C” variance will be sought for the bulk variance indicated above and provide testimony supporting the chosen approach.

Physical Characteristics – N.J.S.A. 40:55D-70.C(1) (a/k/a Hardship Variance) – Testimony should indicate if strict application of the setback requirement would result in peculiar and exceptional difficulties, or exceptional and undue hardship, to the applicant.

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

Benefits Outweighing Detriments – N.J.S.A. 40:55D-70.C(2) (a/k/a Flexible C Variance) – The applicant may also establish, in the absence of proving “hardship”, whether the granting of a variance will further the purposes of the Municipal Land Use Law, and if the benefits of granting the variance will substantially outweigh any detriment.

Negative Criteria – Additionally, with any type of C variance, testimony should confirm that the proposal will not create a substantial detriment to the public good or substantial impairment of the intent and purpose of the Master Plan and the Zoning Ordinance.

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#### **MISCELLANEOUS**

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1. Grading plan approval will be required prior to obtaining a Building Permit.
2. Fire Advisory Board review is required.
3. Approval from Freehold Soil Conservation District is required.

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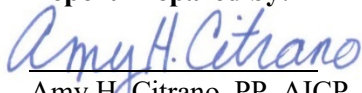
#### **DOCUMENTS REVIEWED**

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- Alterations and Additions Plan, consisting of three sheets, prepared by Jeremiah J. Regan, A.I.A., dated October 22, 2021;
- Boundary and Topographic Survey, consisting of one sheet, prepared by Morgan Engineering and Surveying, dated July 18, 2021;
- Project Narrative, undated;
- Application for Development Permit;
- Zoning Officer Denial Letter;
- Certification of property taxes; and
- Deed for subject property.

I reserve the right to make additional comments based upon the submission of additional documents or testimony presented to the Board.

**Report Prepared by:**

  
Amy H. Citrano, PP, AICP  
Director of Planning

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**LOCATION MAP**

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