

# TOWNSHIP OF MIDDLETOWN

## Zoning Board of Adjustment and Appeals

1 Kings Highway  
Middletown, NJ 07748-2594

JAMES HINCKLEY  
*Chairman*

AMY H. CITRANO, P.P., A.I.C.P.  
*Director of Planning*



ERIN URIARTE  
*Zoning Board Secretary*

Tel: (732) 615-2102  
Fax: (732) 615-2103

### TECHNICAL MEMORANDUM

**DATE:** December 3, 2021  
**BOARD:** Zoning Board of Adjustment and Appeals  
**APPLICATION:** Sirois (#2021-016)  
24 Witches Lane  
Block 770, Lot 4  
R-45 Zone  
“Planning” Variance, Use “D6” Variance for Building Height Relief, and  
Bulk Variance for Front-Yard Setback

---

### PROJECT DESCRIPTION & VARIANCE SUMMARY

---

The applicant is proposing to build a 2,941 sq. ft. (including 879 sq. ft. of deck area) addition to an existing 2,314 sq. ft. (including 489 sq. ft. of deck area) single family dwelling in the Monmouth Hills section of the Township. The house and deck addition is broken down below:

Total House Addition: 2,062 sq. ft.

- Adding a 3<sup>rd</sup> story (1,093 s.f.)
- Infill of existing space on 2<sup>nd</sup> floor and extension at entry (561 sq. ft.)
- New 3-story stair tower (408 sq. ft.)

Total Deck Addition: 879 sq. ft.

- New first floor deck (243 sq. ft.)
- New second floor deck (410 sq. ft.)
- New third floor deck (226 sq. ft.)

The following variance relief is required to accommodate the proposed home expansion:

- Relief, known as a “Planning” variance is required for the existing roadway width for which the home is located. Section 540-504A requires every principle building to be built with frontage on an improved street, and Witches Lane does not comply to Township standards for roads; and
- Use “D6” variance relief is required for the height of the home because the proposed height is more than 10% of the maximum building height permitted in the Residential (R-45) Zone. As per Section 540-908B4, the maximum building height is 2 ½ stories at 35 feet, and 3-stories and 44.9’ is proposed.

### **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

- Bulk “C” variance relief is required for front yard setback for the principal building where 29.4 ft. is proposed and 50 ft. is the minimum required.

The subject property is located in the Water Witch Historic District and approval from the Landmarks Commission is required for the proposed building improvements. Approval was obtained in May 2021.

Additionally, the subject property contains the following existing non-conforming conditions:

- Less than the minimum required for buildable lot area. 84.2% of the subject lot contains critical areas/steep slopes resulting in a buildable lot area of 5,165 sq. ft. where 30,000 sq. ft. is required; and
- Minimum circle diameter where 125’ is required and 49.4 ft. is existing.

---

### **DEVELOPMENT HISTORY OF THE SUBJECT LOT**

---

In 1976, the Zoning Board of Adjustment granted the following variances to approve the construction of the single family dwelling and parking area that exists on the lot today:

- Building a residence without a garage on a road not improved to Township standards;
- Minimum gross floor area of 1,130 sq. ft. where 1,300 sq. ft. was required;
- Minimum lot frontage of 133 ft. on Witches Lane where 200 ft. was required;
- Minimum front yard setback of 32 ft. for the house from Witches Lane where 50 ft. was required;
- Minimum front yard setback of 0 ft. for the stone parking area where 50 ft. was required;
- Minimum side yard setback of 23 ft. for the stone parking area where 50 ft. was required; and
- Minimum lot area of 22,229 sq. ft. where 45,000 sq. ft. was required.

---

### **PROPERTY DESCRIPTION, ZONING AND SURROUNDING LAND USES**

---

The subject property is irregularly shaped and maintains frontage on Witches Lane, Bayview Terrace, and Gypsy Pass, a paper street, in the Monmouth Hills section of Middletown Township. The property contains a 2-story single-family home, and due to the site’s topography, steep slopes and wooded nature, a portion of the dwelling is cantilevered. 84.2% of the lot contains steep slopes of 15% or more. Access to the dwelling is from Witches Lane and off-street parking is provided by an existing stone parking area on Witches Lane. A wood bridge extends over the sloped area from the parking area to the second story of the home.

The property is located in and surrounded by the Residential (R-45) Zone, and within the Water Witch Historic District.

---

### **PLANNING COMMENTS**

---

1. “Planning” Variance: Witches Lane in Monmouth Hills is considered not improved to Township Standards, and therefore a variance to construct an addition to the existing dwelling on the subject lot is required. The applicant is seeking what is commonly referred to as a “Planning Variance.” The Zoning Board may grant a variance to permit the building addition that fronts upon a street that has not been improved to Township standards - as long as the following conditions are satisfied:
  - Adequate access for firefighting equipment, ambulances and other emergency vehicles is provided to ensure the protection of health and safety. We defer to the Fire Advisory Review Board.

- Additionally, the applicant must demonstrate to the Board that the circumstances of the case do not require the residence to be related to a street improved to Township standards, or that disallowing the building addition on the subject lot will entail practical difficulty or unnecessary hardship.

## 2. Use “D6” Variance - Height

The proposed development requires variance relief from the maximum building height because the proposed height is more than 10% of the maximum permitted. As per Section 540-908B4, the maximum building height shall not exceed 2 ½ stories at 35 feet, and 3 stories and 44.9 feet is proposed.

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

Based on the Municipal Land Use Law the following testimony is required for granting of a use variance as per 40:55D-70d(6):

Positive Criteria: Testimony should address the “positive and negative criteria” proofs associated with the “D” variance. The Applicant must demonstrate to the Board that there are “special reasons” present to justify the “D” Variance. Specifically:

- Does the proposed residence inherently promote the public good? If not...
- Does the proposed use further the purposes of the Municipal Land Use Law (MLUL)?
- Is the site particularly suited to the proposed use?

### Negative Criteria:

Testimony should address that increasing the height of the existing single family home more than 10% of the maximum building height permitted 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.

No variance can be granted without a demonstration that such variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zoning Ordinance and the Master Plan.

### Negative Impacts:

The Applicant should provide testimony discussing the visibility of the proposal from surrounding residences and roads, and identify potential steps to minimize visual impacts.

## 3. Bulk “C” Variance for front yard setback for the residence

The proposed development requires variance relief from the front yard setback minimum requirement where 50 ft. is required and 29.4 ft. is proposed.

### **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 front yard 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 structures 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 proposed improvements requiring bulk variance relief 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.

---

### MISCELLANEOUS

---

1. The applicant shall indicate in testimony whether disturbance to critical areas will be necessary to accommodate the proposed expansion of the home.
2. The applicant shall indicate in testimony whether the existing block wall is in conformance with Section 540-616I, and also whether improvements are proposed for the block wall.
3. Grading plan approval will be required.
4. Fire Advisory Board review is required.
5. Approval from Freehold Soil Conservation District is required.

---

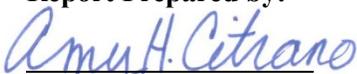
### DOCUMENTS REVIEWED

---

- Critical Slopes Survey, consisting of one sheet, prepared by Richard E. Stockton & Assoc., Inc., dated August 31, 2021;
- Location Survey, consisting of one sheet, prepared by Richard E. Stockton & Assoc., Inc., dated August 15, 2021;
- Variance Plan, consisting of one sheet, prepared by Richard E. Stockton & Assoc., Inc., dated August 15, 2021;
- Alterations and Additions Plan, consisting of eight sheets, prepared by Studio ONE Architects, dated April 8, 2021 and last revised September 21, 2021;
- Certificate of Appropriateness from Middletown Landmarks Commission, May 2021;
- Application for Development Permit;
- Zoning Officer Denial Letter;
- Property Modification Approval from Monmouth Hills Inc.;
- 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

**LOCATION MAP**

