



## MEMORANDUM

### Clarke Caton Hintz

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**To:** Montgomery Township Zoning Board of Adjustment

**From:** Michael F. Sullivan, ASLA, AICP  
James Clavelli, PP, AICP

**Re:** **Kharrubi Residence**  
**Bulk Variances**  
8 County Route 518  
Block 24001, Lot 37  
R-5 Single Family Residential

**Date:** February 20, 2024

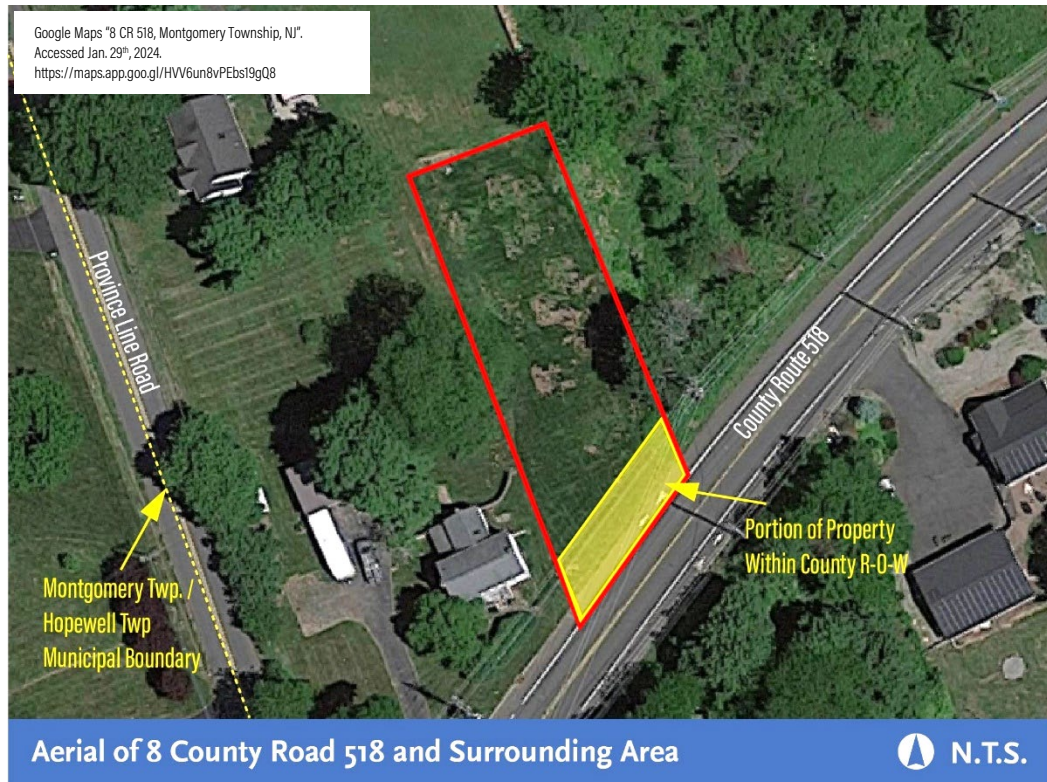
### 1.0 Project & Site Description

- 1.1 Project Description:** The applicant is seeking variance relief to construct a single-family detached dwelling on an undersized lot in the R-5 Single Family Residential District. The proposed dwelling is 2.5 stories in height and contains a two car garage and a driveway composed of porous pavers. A concrete walk and concrete porch are proposed in the front of the dwelling, and a concrete landing area and steps are proposed in the rear of the dwelling. A septic bed and reserve septic area are proposed in the rear yard of the dwelling. Four shrubs are proposed near the concrete porch in front of the dwelling. Fencing is also proposed.

John Hatch, FAIA  
George Hibbs, AIA  
Brian Slauch, AICP  
Michael Sullivan, AICP  
Michael Hanrahan, AIA  
Mary Beth Lonergan, AICP



View of Vacant Lot 37 From County Route 518



- 1.2 **Site Description:** The subject property, approximately .272 acre ( $\pm 11,848$  sf.) in size, is an irregularly shaped, vacant lot located on County Route 518 (Georgetown Franklin Turnpike). The site frontage is a diagonal line creating a small triangle in the front of the property, though the lot is rectilinear beyond the initial  $\pm 37$  ft. The only notable features on the site are two trees located near the western property boundary, two lawn chairs, cones that appear to demarcate the rear property line, either the beginnings or remnants of a mailbox, and grass and other low growing vegetation. The nearby fences appear to belong to the neighboring properties. The Montgomery Township Critical Areas Map does not indicate any sensitive environmental features on or near the property. The plan indicates that there is a 411 sf. concrete pad located on site and is slated to be removed. This office did not identify the pad during a site visit, indicating it has either already been removed, or was not visible due to the snow on the ground at the time of the site visit.
- 1.3 **Neighborhood Context:** The site is in the R-5 zone, fronts on County Route 518 and is  $\pm 150$  feet east of the shared boundary between Montgomery Township and Hopewell Township. The property abutting the site to the west is a single-family residential dwelling on a larger lot, as is the lot abutting the site to the north along



the rear property line. A considerably larger lot belonging to a single family detached dwelling that fronts on Moores Grove Court and Pear Tree Drive is located to the east, though the land near the site in question is primarily vegetated with trees and shrubs and lacking any development other than a fence. Across CR-518 is the Solid Rock United Pentecostal Church, a building that resembles a single-family detached dwelling but is classified as commercial on a lot similar in size to the site in question, and another large lot single-family residential lot with a dwelling that fronts on Province Line Road.

**1.4 County Right-of-Way Dedication:** The lot is located along County Route 518, and  $\pm 1,987$  sf. of the site is located within the County right-of-way. It is unknown at this time whether the property owner will be required to dedicate a portion of the property to the County, and the Montgomery Township Zoning Ordinance does not contain provisions for land dedicated to the County that credit dedicated land to the applicant for building or lot coverage (such credits are only available when land is dedicated to the Township per §16-5.7a.2(b)). As such, this review will provide separate calculations for bulk requirements based on the lot as presented, and for the lot if a portion is dedicated to the County.

**1.5 Relief Required:** The proposed dwelling requires variances from 12 of the R-5 zone bulk requirements. Design exceptions are required for a lack of proposed sidewalks and for proposing less than the required number of trees.

## **2.0 Use & Bulk Standards**

**2.1 Principal Permitted Uses.** The application is in compliance. Pursuant to §16-4.a.2, the R-5 zone permits single-family detached dwelling units. The subject property is vacant and a single-family detached dwelling is proposed.

**2.2 Accessory Permitted Uses.** The application is in compliance. The proposed septic bed and reserve area are permitted.

**2.3 Area & Yard Requirements.** Table 1 indicates the plan's conformance with the R-5 Zone regulations. As the site is less than 1 acre in size, it does not qualify for any reductions indicated in footnotes [1], [4], [5], and [12]. The applicant indicates that some of the variances are preexisting. While the lot is preexisting, the proposed use is new and bulk requirements are specific to single-family detached dwellings per the table in §16-4.2d, and as such this office recommends the variances be looked at as new, rather than preexisting. **As indicated in the following table, 12 variances are required from R-5 area and yard requirements.**



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Table 1: R-5 Single Family Residential District Area & Yard Requirements: §16-4.2d					
	Required	Existing	Proposed	Proposed w/ ROW Dedication	Variance
<b>Principal Building Minimums</b>					
Max. Bldg. Height	35 ft.	n/a	29 ft. 11 in.	29 ft. 11 in.	No
Min. Lot Area	5 acres	.272 acre	No change	.228 acre	Yes
Min. Lot Frontage	300 ft.	80.72 ft.	No change	78.96 ft.	Yes
Min. Lot Width	300 ft.	80.72 ft.	No change	78.96 ft.	Yes
Min. Lot Depth	500 ft.	176.54	No change	143.5 ft.	Yes
Min. Front Yard	75 ft.	n/a	40.8 ft.	16.31 ft.	Yes
Min. Side Yard (each)	75 ft.	n/a	11 ft.	11 ft.	Yes
Min. Rear Yard	100 ft.	n/a	80.5 ft.	80.5 ft.	Yes
<b>Accessory Building Minimums</b>					
Distance to side line	50 ft.	n/a	11 ft.	11 ft.	Yes
Distance to rear line	50 ft.	n/a	12.33 ft.	12.33 ft.	Yes
Distance to other building	20 ft.	n/a	13.83 ft.	13.83 ft.	Yes
<b>Maximum Coverages</b>					
Max. Lot Cover	15%	3.48%	26.27%	31.3%	Yes
Max. Principal Bldg. Cover	8%	n/a	16.3%	19.4%	Yes
Agg. Bldg. Coverage of accessory bldg(s)	2%	n/a	0%	0%	No

- 2.4 **Minimum Lot Area: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required lot area in the R-5 zone is five acres. The existing lot is .272 acre and may be reduced to .228 acre if required to dedicate land within the County right-of-way. **A variance is required.**
- 2.5 **Minimum Lot Frontage: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required lot frontage in the R-5 zone is 300 ft. The existing lot contains 80.72 ft. of frontage, or 78.96 ft. if required to dedicate land within the County right-of-way. **A variance is required.**
- 2.6 **Minimum Lot Width: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required lot width in the R-5 zone is 300 ft.. The existing lot contains 80.72 ft. of width, or 78.96 ft. if required to dedicate land within the County right-of-way. **A variance is required.**
- 2.7 **Minimum Lot Depth: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required lot depth in the R-5 zone is 500 ft.. The existing lot contains





176.54 ft. of depth, or 143.5 ft. if required to dedicate land within the County right-of-way. **A variance is required.**

- 2.8 **Minimum Front Yard Setback: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required front yard setback in the R-5 zone is 75 ft. The proposed dwelling contains a front yard setback of 40.8 ft., which is reduced to 16.31 ft. if required to dedicate land within the County right-of-way. **A variance is required.**
- 2.9 **Minimum Side Yard Setback: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required side yard setback in the R-5 zone is 75 ft on each side. The proposed dwelling contains a side yard setback of 11 ft. on either side (the side yard is not impacted by a possible County right-of-way dedication). **A variance is required.**
- 2.10 **Minimum Rear Yard Setback: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required rear yard setback in the R-5 zone is 100 ft. The proposed rear yard setback is 80.5 ft (the rear yard is not impacted by a possible County right-of-way dedication). **A variance is required.**
- 2.11 **Accessory Minimum Distance to Side Lot Line: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required distance of an accessory structure to a side lot line is 50 ft. The proposed septic field is 11 ft. from the side lot line (this is not impacted by a possible County right-of-way dedication). **A variance is required.**
- 2.12 **Accessory Minimum Distance to Rear Lot Line: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required distance of an accessory structure to a rear lot line is 50 ft. The proposed septic field is 12.33 ft. from the rear lot line (this is not impacted by a possible County right-of-way dedication). **A variance is required.**
- 2.13 **Accessory Minimum Distance to Other Building: *Variance relief is required.*** Pursuant to §16-4.2d, the minimum required distance of an accessory structure to another building is 20 ft. The proposed septic field is 13.83 ft. from the proposed principal building (this is not impacted by a possible County right-of-way dedication). **A variance is required.**
- 2.14 **Maximum Lot Coverage: *Variance relief is required.*** Pursuant to §16-4.2d, the maximum permitted lot coverage is 15%. The proposed lot coverage is 26.27%, which increases to 31.3% if the property owner is required to dedicate the portion of the lot located within the County right-of-way. **A variance is required.**



- 2.15 **Maximum Principal Building Coverage:** *Variance relief is required.* Pursuant to §16-4.2d, the maximum permitted building coverage is 8%. The proposed principal building coverage is 16.3%, which increases to 19.4% if the property owner is required to dedicate the portion of the lot located within the County right-of-way. **A variance is required.**

### 3.0 General Plan Comments

- 3.1 **Principal Dwelling.** The proposed dwelling is a single-family detached dwelling that is two and half stories and 29 feet and 11 inches in height. The building contains an attached two-car garage that faces CR-518. The interior of the building consists of a basement, first story, second story, and possible attic space or crawl space.



- 3.2 **Principal Dwelling – Interior:** Located on the first floor of the dwelling is the garage, a vestibule, a pantry, a kitchen, a dining room, a family room, a half bathroom and an office. The second floor consists of a master bedroom with two



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closets and an ensuite bathroom, a second bedroom and second full bathroom, a laundry room, and a living room. This also contains access to the attic through a ladder.

**3.3 Bedroom Discrepancy:** The “*Project Description and Miscellaneous Information*” document prepared by Bayer-Risse Engineering indicates that the proposed dwelling will contain three bedrooms, rather than two bedrooms, as indicated in the architectural floor plans. The documents should be updated to be consistent and the proposed number of bedrooms should be confirmed.

**3.4 Septic Only Approved for Two Bedroom Dwelling:** A letter from the Montgomery Township Health Department dated November 17, 2023 was provided with the application. It indicates that the proposed septic system was approved for a two-bedroom dwelling. As such, the clarification indicated in 3.3 is important to the eventual functioning of the site.

**3.5 Eliminate the Possibility of Converting the Office or Living Room Into a Bedroom:** It is recommended as a condition of any approval that the proposed office and second floor living room be prohibited from being converted into a third bedroom due to inadequate septic resources available to support a third bedroom. To facilitate this, the Board may consider requiring the applicant to widen the entryway to the office, not permitting a door in that location, and removing the proposed windows, such that it is unlikely to be feasible to convert the space into a code approved bedroom. The entrance to the upstairs living room appears to already have an entryway the does not include a door and which is too wide to include a door.

### **4.0 Miscellaneous**

**4.1 Sidewalks. A design exception is required.** §16-5.14c.1(d) requires “sidewalks shall be provided along all existing streets upon which all residential and nonresidential development abuts, unless specifically waived in certain locations by the reviewing municipal agency based upon good cause shown by the applicant ....” There are no sidewalks located along the property frontage on County Route 518. If the County permits the construction of a sidewalk along the property frontage, the applicant should develop a sidewalk. **A design exception is required.**

**4.2 Trees. A design exception is required.** 16-5.6d.3, a minimum of fourteen (14) trees per acre shall be planted on single-family residential lots. At 11,848 sf., this lot requires a total of 4 ( $0.272 \times 14 = 3.8$ ) trees to be planted on the site. While four



trees are proposed, two of the trees are street trees (see 4.3 below), and do not count towards the four trees that are otherwise required. **Two additional trees should be proposed on site, otherwise a design exception is required.**

- 4.3 **Street Trees.** The plan complies. §16-5.6d.15 requires street trees at 50 foot intervals. With 80.72 feet of frontage along Scarborough Road, the applicant is required to have two street trees ( $80.72 / 50 = 1.6$  trees) along County Route 518. Two shade trees are proposed along the frontage. The plan complies.
- 4.4 **Soil Hauling. Compliance review is deferred to the Board Engineer.** §16-5.6.c requires that *no soil shall be removed from or be imported to any site in excess of twenty (20) cubic yards per year without prior approval of the Board. For this purpose, a plan shall be submitted showing how the soil is to be distributed and stabilized including grading contours. If the soil is to be imported, a plan shall be submitted describing methodology and frequency of testing the soil to ensure its safe quality. The plan shall describe the size and number of vehicles that are proposed for hauling the removed or imported soil together with the hauling route. There is no information on the plan regarding the movement of soil.* The applicant should provide testimony regarding the movement of soil, and if necessary, submit additional information to be reviewed by the Board Engineer.

## 5.0 Consideration of the “C” Variances

The following sections summarize the “c” 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” variances. The applicant must justify the “c” variances separately and each variance must satisfy both parts.

- 5.1 **Consideration of the Positive Criteria.** 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:
- 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 the specific piece of property; or
- By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

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

- Where in an application or appeal relating to a specific piece of property to purposes of this act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

**5.2 Consideration of the Negative Criteria.** Should the applicant satisfy the positive criteria, it must also be demonstrated that 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. These factors are referred to as the negative criteria.

## **6.o Analysis of the Variances**

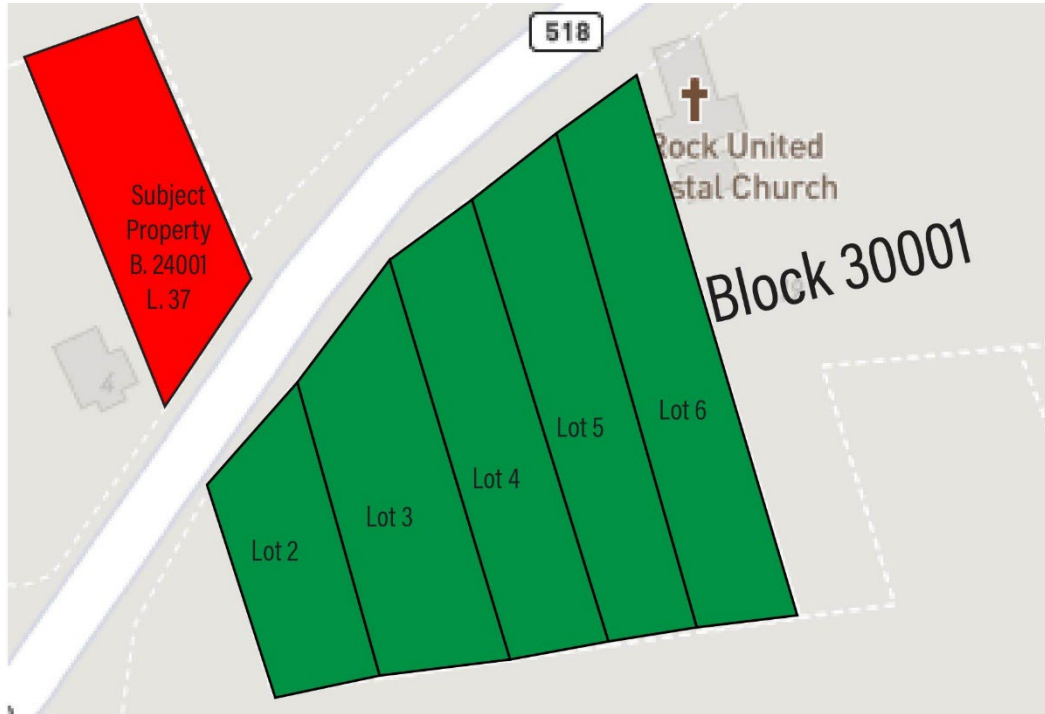
**6.1 Is the Lot Typical or Atypical?** As indicated in Table 1, the proposed dwelling requires numerous variances stemming from the lot being significantly undersized relative to the requirements of the R-5 zone. The R-5 zone encompasses a considerable portion of the Township. Within the R-5 zone there are several residential clusters which allow for smaller lots that are part of an approved development under §16-6.5,

The subject property, and five lots located across CR-518, are unusually small for the zone and are not part of a residential cluster. The similarly sized lots are all located in Block 30001 and are (from west to east) Lot 2, Lot 3, Lot 4, Lot 5, and Lot 6. These are indicated in the image on the following page, followed by a table comparing elements of each property with the subject property.



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Subject Property Compared With Nearby Lots in the R-5 Zone

Table 2: Block 24001, Lot 37 Compared With Nearby Lots in the R-5 Zone				
Property	Lot Size	Frontage	Land Use	Setback
Block 24001, Lot 37 (subject. Lot)	.272 acre	80.72	2 – Residential	40.8 ft.
Block 30001, Lot 2	.232 acre	70 ft.	1 – Vacant	n/a
Block 30001, Lot 3	.364 acre	100 ft.	1 – Vacant	n/a
Block 30001, Lot 4 & 5*	.569 acre	105.4 ft.	4 - Commercial	±45 ft.
Block 30001, Lot 6**	1.724 acres	300.7 ft.	15D - Church	±10 ft.
*Lots 4 and 5 function as, and are assessed as, one lot.				
**Lot 6 is a tax-exempt church lot that is associated with Lot 7.				

- 6.2 Comparing Lot 37 to the Other Undersized Lots:** As indicated in the table above, the Lot is on the small side when compared to the other lots, though it is not the smallest lot. This applies to lot frontage as well. None of these lots are residential lots, and two of the lots are vacant. Lots 4 and 5, which are assessed together, contain a commercial use with two buildings including a garage and what looks like a dwelling. Lot 6 is associated with the larger Lot 7 to the east and is associated with the Rock United Pentecostal Church.



The church and the business on Lots 4 and 5 have undersized setbacks for the zone. The Church has a setback of approximately 10 ft. (this is an approximate distance determined using Google Maps), while the commercial use has a setback of approximately 45 ft. (again, an approximate measure from Google Maps). Regarding the setback, it may be most appropriate to compare the proposed dwelling with the dwelling immediately to the west. While this lot is much larger than the subject property, the front yard setback of the dwelling is similarly undersized.



Property to the West and Nearby Church Have Undersized Setbacks

- 6.3 **Conclusion:** The lot is atypical both in relation to the R-5 zone generally and nearby undersized lots. The residential use is typical of the zone, though the size of the lot is small for a residential lot. Nearby lots of a comparable size are either vacant or contain non-residential uses. The proposed undersized front yard setback is similar to other buildings nearby, namely the residence immediately to the west and the church  $\pm 750$  ft. to the east, both of which are located in the R-5 zone and front on County Route 518. The small lot size in the immediate area indicates the unique lot pattern in this section of the R-5 zone, though this is a minor portion of the zone.

## 7.0 Consideration of the Design Exceptions

The proposal includes design exceptions. The Municipal Land Use Law at N.J.S.A. 40:55D-51.b discusses the criteria for the granting of exceptions. While the burden of proof is lower than that of variances, the statute does provide a framework for decisions:



*The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.*

## 7.0 Relevant Policy

7.1 **Master Plan Goals.** The Township Master Plan includes several goals which are relevant to the Board's consideration of this application. The following goals can be found on pages 6 through 8 of the 2017 Master Plan Reexamination Report:

2. *The identity of the Township as a totality and the integrity of individual neighborhood areas should be preserved, enhanced and created to the maximum extent possible.*
- 3.b *In order to safeguard against contamination of underground potable water supplies from the septic effluent discharged above or near ground level, the capacity of the soils throughout the Township to absorb and adequately filter septic effluent before the effluent enters the potable water supply should be a basic consideration in establishing residential densities and minimum lot sizes for housing within the Township;*
- 3.e *Based upon the documented information regarding the physical characteristics of the land and its ability to support the development of residential dwelling units which rely upon septic disposal systems, the minimum lot sizes required within the residentially zoned land areas of the Township should be periodically reassessed and changed when deemed prudent in order to protect existing and future homeowners' quality of life.*
4. *The Development Plan should strive to prevent the homogenous spread of suburban development throughout the municipality. Specific areas of the Township should be designated for specific types of residential and non-residential development. The rural and country atmosphere which prevails throughout most of the municipality should be maintained.*



The applicant should discuss the proposed dwelling and whether it preserves or enhances the integrity of the neighborhood. As indicated in Section 6 of this report, the residential use is typical of the zone (as this is a residential zone), while the lot size is atypical and only comparable to lots in the immediate vicinity of the site and is not characteristic of the zone as a whole.

Of greater concern, and as indicated in goals 3.b, 3.e, and 4 of the 2017 Master Plan Reexamination Report, is the capacity of the proposed septic system. The application indicates that the proposed dwelling contains two-bedrooms in the architectural drawings, while other material submitted indicates a three-bedroom home. The Health Department only approved the septic system for a two-bedroom dwelling.

## 8.0 Materials Reviewed

- 8.1 *Montgomery Township Planning & Zoning Board Application* and related documents, dated April 14, 2023.
- 8.2 *Township of Montgomery Board of Health Septic Approval*, dated November 17, 2023.
- 8.3 *Project Description and Miscellaneous Information*, prepared by Theodore H. Bayer, PE, Bayer-Risse Engineering, Inc., dated April 10, 2023.
- 8.4 *Architectural Plans for New Single Family Residence*, 14 sheets, prepared by Steven Considine, dated July 18, 2022.
- 8.5 *Variance Plan for Tamer Kharrubi*, 10 sheets, Theodore H. Bayer, PE, Bayer-Risse Engineering, Inc., dated April 10, 2023

## 9.0 Applicant / Owner / Professionals

- 9.1 **Owner/Applicant:** Tamer Kharrubi, 34 Jeremy Drive, Dayton, NJ 08810. Telephone: 609.613.0757.
- 9.2 **Attorney.** Richard Schatzman, Esq, Schatzman Baker P.A., 215-216 Commons Way, Princeton, NJ 08540. Telephone: 609.924.1199. Email: aslimak@schatzmanbaker.com.





**9.3 Engineer.** Theodore Bayer, PE, Bayer-Risse Engineering, Inc., 78 Route 173 West, Suite 6, Hampton, NJ 08827. Telephone: 908.735.2255. Email: tbayer@bayer-risse.com.

**9.4 Architect.** Steven Considine, RA, 43 Prospect Street, Bernardsville, NJ 07924. Telephone: 908.655.7781. Email: stevenconsidinearchitect@gmail.com.

## **10.0 Summary**

**10.1** The applicant is seeking several bulk variances relating to developing a dwelling on an undersized lot in the R-5 zone. This report raises questions regarding the ultimate lot size given the possibility of a County easement dedication, as well as regarding the capacity of the proposed setback and the number of proposed bedrooms.

- a)** Variances
  - §16-4.2d Minimum Lot Size
  - §16-4.2d Minimum Lot Frontage
  - §16-4.2d Minimum Lot Width
  - §16-4.2d Minimum Lot Depth
  - §16-4.2d Minimum Front Yard Setback
  - §16-4.2d Minimum Side Yard Setback
  - §16-4.2d Minimum Rear Yard Setback
  - §16-4.2d Distance of Acc. Structure to Side Lot Line
  - §16-4.2d Distance of Acc. Structure to Rear Lot Line
  - §16-4.2d Distance of Acc. Structure to Principal Building
  - §16-4.2d Maximum Lot Coverage
  - §16-4.2d Maximum Principal Building Coverage
- b)** Design Exceptions
  - §16-5.14c.1(d) Sidewalk Requirement
  - §16-5.6d.3 Trees

Please contact this office with any questions you may have.