

COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

**B U R G I S**  
ASSOCIATES, INC.

Principals:  
*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*  
*David Novak PP, AICP*

## MEMORANDUM

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

From: David Novak PP, AICP

Subject: Daniel-Tello Flores  
d(4) Floor Area Ratio Variance and "C" Variance Relief  
Block 42 Lot 6  
210 Fisher Place

Date: July 12, 2023

BA#: 4028.09

WWT#: 23-03

### Introduction

The applicant, Daniel Tello-Flores, has submitted an application seeking "d(4)" floor area ratio and "c" bulk variance relief to construct an addition to an existing single-family dwelling. The site, which is identified by municipal tax records as Block 42 Lot 6, is located at 210 Fisher Place in the R-20 Low-/Medium Density Residential District.

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

1. Plot plan prepared by Joseph Como, RA, dated May 25, 2023 (no revision date).
2. Construction plan prepared by Joseph Como, RA, dated May 27, 2022 (no revision date).
3. Memorandum from Pisano Development Group, dated May 23, 2023.



## Property Description

The subject site is located in the northerly portion of the Township, near the intersection of Fisher Place and Fairview Avenue. The site has an area of 6,682 square feet and is irregular in shape. It fronts along Fisher Place for approximately 82 feet and has a depth which varies from approximately 69.69 feet to 92.08 feet.

The site is presently developed with a one-and-one-half story single-family dwelling which, as per the submitted plan, has a floor area of approximately 830 square feet. The dwelling presently contains at least two bedrooms (an additional room on the first floor is unlabeled) as well as a dining room and kitchen. It is attached to a one-car garage via a breezeway. A driveway extends along the northerly side property line.

Surrounding land uses consist predominantly of single-family uses to the northwest, southwest, and southeast. An undeveloped tract of land is further located to the site's southeast, while the SRI Campus is located to its north. 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 construct a second story addition as well as an addition to the rear of the garage. As a result of this addition, the dwelling will contain two bedrooms as well as a kitchen, dining room, office, living room, mud room, two bathrooms, and a two-car garage. The façade of the building will consist of new windows and siding, fiberglass roof shingles, new exterior lights, new insulated garage doors, and an aluminum wrapped wood trim.

## Master Plan

As per the 2020 Land Use Plan, the site is located in the Medium Density Residential (R-20, R-20A, and R-20B) land use category. This land use category comprises a number of established residential neighborhoods which are located within three zoning districts: the R-20, the R-20A, and the R-20B Districts. These areas of the Township are predominantly developed with single-family dwellings with typical lot sizes of twenty thousand square feet. While their minimum lot sizes are the same, the different R-20 Districts were originally designed to reflect the specific setback conditions found in those areas.

As noted by the 2020 Plan, it is the main intent of this land use category to recognize and preserve the established character of these neighborhoods and to reinforce the prevailing minimum lot size of twenty thousand square feet.



## Zoning

The site is located in the R-20 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-20	Existing	Proposed	Section
Minimum Lot Area (sf)	20,000	(ex) 6,682.00	(ex) 6,682.00	200-173.2A.
Minimum Lot Width (ft)	100	(ex) 82.25	(ex) 82.25	200-173.2B.
Minimum Front Yard (ft)	40	(ex) 35.4	(ex) 35.40	200-173.2C.(1)
Minimum Rear Yard (ft)	30	(ex) 23.00	<b>(V) 14.83</b>	200-173.2C.(2)
Minimum Side Yard (ft)	15	(ex) 9.80/22.00	(ex) 9.8/22.00	200-173.2C.(3)
Maximum FAR (%)	13	12.42	<b>(V) 22.37</b>	200-173.2D.
Max. Improvement Cov. (%)	20	(ex) 32.74	<b>(V) 32.66</b>	200-173.2E.
Max. Building Height (st/ft)	2.5/35	1.5/18	2.5/25	200-173.2F.

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

### "d(4)" Variance Relief

The applicant has requested variance relief pursuant to NJSA 40:55D-70.d(4) of the MLUL for exceeding the permitted floor area ratio (FAR). The R-20 District establishes a maximum FAR of thirteen percent which equates to approximately 868 square feet of permissible floor area for the subject site. The applicant has proposed a FAR of 22.37% which equates to 1,495 square feet of floor area.

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

In addition, the applicant requires variance relief pursuant to NJSA 40:55D-70c.(1) and/or (2) of the MLUL for the items identified herein. 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.

The following items require variance relief:

1. Rear Yard Setback. Variance relief is requested from Section 200-173.2C.(2) which establishes a rear yard setback of thirty feet, whereas the applicant has proposed a setback of 14.83 feet. For reference, the dwelling presently has a rear yard setback of 23 feet.
2. Maximum Improvement Coverage. Variance relief is requested from Section 200-173.2E. which establishes a maximum improvement coverage of twenty percent which equates to approximately 1,336 square feet of allowable coverage. The applicant has proposed an improvement coverage of 32.66% which equates to approximately 2,183 square feet of coverage. For reference, the site presently has an improvement coverage of 32.74% which equates to approximately 2,188 square feet of coverage. Thus, the applicant is proposing to eliminate five square feet of improvement coverage.



## Planning and Zoning Review

We offer the following for the Board's consideration.

### Existing Site Conditions

The applicant and the Board should discuss the existing site conditions and how they relate to the requested variance relief. We note the following:

1. The subject site has an area of 6,682 square feet. This is approximately one-third the required lot size of the R-20 District.
2. The site is also irregularly shaped. Specifically, its southerly lot line has a length of 92.08 feet while its northerly side lot line has a length of 69.69 feet. This results in a condition in which the rear yard area decreases as the rear lot line approaches the northerly side lot line.
3. As a result of the site's undersized and irregularly shaped nature, its building envelope is also irregularly shaped and has an area of approximately 1,596 square feet.

### 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.



### Proposed Building Design

The applicant should provide testimony as to how the design of the proposed building compares to the designs of existing buildings in the area. Testimony should focus on the proposed height, building materials, and roof-line designs. The Board and the applicant should also discuss the design of the building in relationship to the site's location. We note that the site is not located along a heavily traveled road (like Washington Road). It is also located in close proximity to the SRI Campus.

### Bedroom Count and Parking

The Residential Site Improvement Standards (RSIS) requires one and one-half parking spaces for a two bedroom single-family dwelling. The applicant is addressing this standard.

### Tree Removal

The applicant should indicate whether any trees are proposed to be removed.

### Office

An office is proposed on the ground floor. We note that no closet is located in this office, nor is it separated from the dining room by a door. Nevertheless, should it be converted to a bedroom in the future, we find that the site would be able to accommodate the additional parking requirement (three bedrooms require two spaces).

The applicant should also discuss whether this office will be for remote work, or whether a home occupation is proposed.

### Comparison to Neighborhood

A table as well as two maps have been provided with this memorandum which respectively identify those dwellings in the vicinity of the subject site which exceed the FAR standards established by the R-20 District, as well as those which exceed the proposed FAR of the subject site. This information was based upon publicly available tax information.

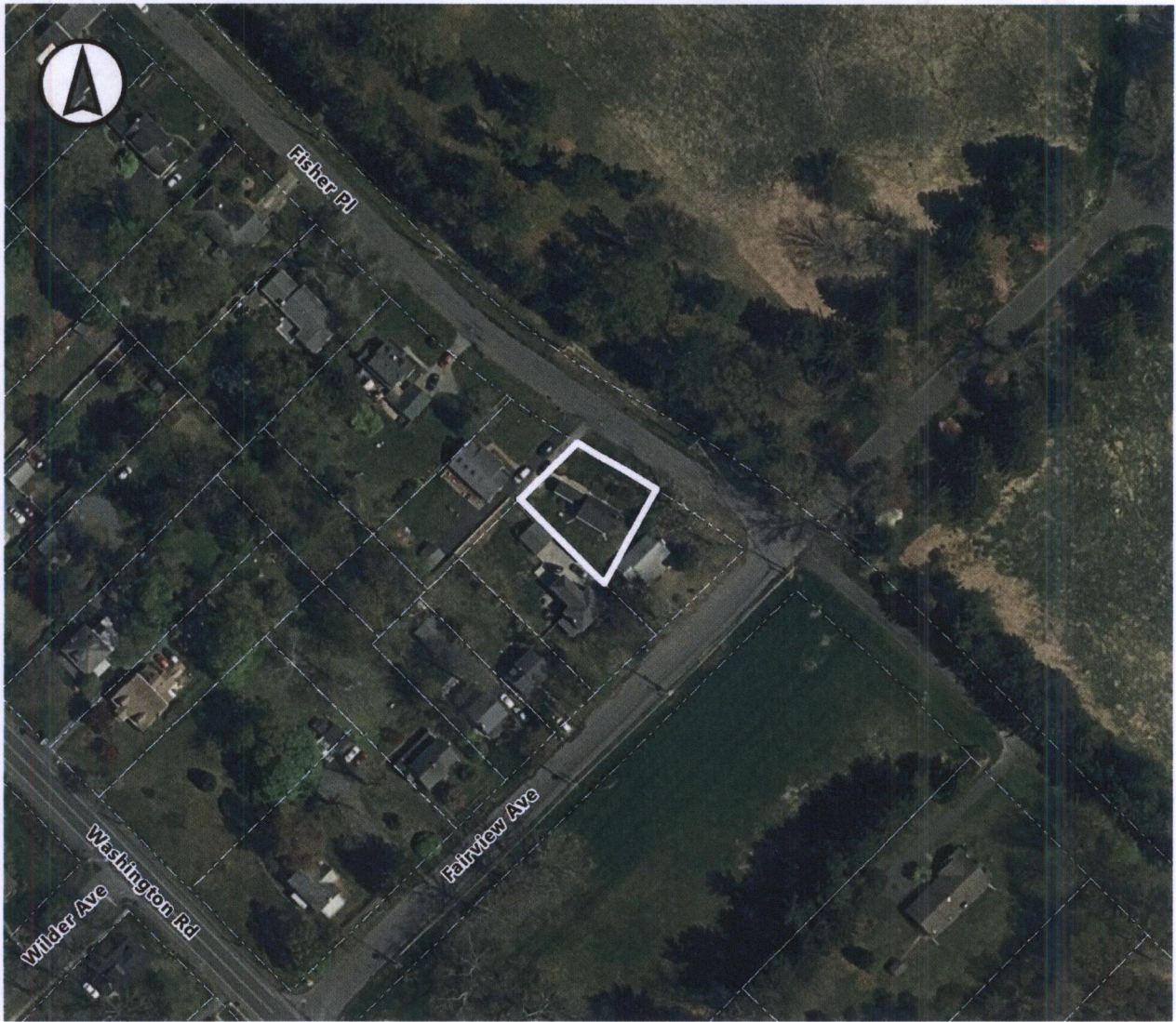
Of the eleven properties analyzed, three properties exceed the FAR standard of the R-20 while none exceed the proposed FAR of the site. However, the Board should note that the area of the subject site is smaller than all of the properties herein. Furthermore, its floor area of 1,495 square feet is less than six of the eleven lots analyzed herein.



Table 2: FAR Analysis

Block	Lot	Address	Lot Size	Floor Area	FAR	Greater Than District	Greater than Proposal
42	15	24 Fairview Ave	8,276	816	9.85	No	No
42	10	20 Fairview Ave	12,750	2,020	15.84	Yes	No
42	9	16 Fairview Ave	8,498	1,311	15.42	Yes	No
42	8	14 Fairview Ave	10,201	1,582	15.50	Yes	No
42	14	12 Fairview Ave	15,450	1,440	9.32	No	No
42	5	207 Washington Road	26,571	2,106	7.92	No	No
42	13	214 Fisher Place	11,778	1,292	10.96	No	No
42	11	220 Fisher Place	22,411	1,531	6.83	No	No
40	24	224 Fisher Place	18,499	1,740	9.40	No	No
40	22	228 Fisher Place	18,499	1,352	7.30	No	No
40	20	232 Fisher Place	18,399	1,716	9.32	No	No





Map 1: Aerial of Subject Site (scale: 1" = 150')





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 <b>FAR Map 1: Comparison to R-20 FAR Requirement</b>	Project No. 4028.09	Date 06.15.23	Drawn By DN
	Scale 1" = 150'	Dwg No. map 01	

**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

Project Title:  
**210 Fisher Place Variance Application**  
 Township of West Windsor | Mercer County, New Jersey





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 Subject Site (Proposed FAR)	4028.09	06.15.23	DN

<p><b>BURGIS ASSOCIATES, INC.</b>          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.
	210 Fisher Place Variance Application Township of West Windsor   Mercer County, New Jersey	1" = 150'	map 02




**MASON, GRIFFIN & PIERSON**

A PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW

**MEMORANDUM**

**To:** West Windsor Township Zoning Board of Adjustment

**From:** Edwin W. Schmierer, Esq.  
West Windsor Township Zoning Board of Adjustment Attorney

**Date:** June 28, 2023 

**Re:** West Windsor Township Zoning Board of Adjustment –  
Daniel-Tello Flores and Christine Sfraga Use and  
Bulk Variance Application, Application No. ZB23-03:  
210 Fisher Place, Block 42, Lot 6,  
West Windsor Township Tax Map,  
R-20 Residential Zoning District

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The West Windsor Township Zoning Board of Adjustment ("Board") will consider the above-reference application at its meeting on August 3, 2023.

Daniel-Tello Flores and Christine Sfraga ("Applicants") propose substantially renovating and enlarging their existing one and a half story single family home located at 210 Fisher Place and designated as Block 42, Lot 6 on the West Windsor Township Tax Map ("Property"). The improvements and renovations proposed to the Property include the construction of a new second story, the alteration of the first story and the construction of a new attached garage. A new driveway will also be installed.

The Applicants' Property is significantly undersized in the R-20 residential zoning district which requires a minimum lot size of 20,000 square feet. The property is 6,682 square feet in size. The existing floor area including a dormered second floor area totals 830 square feet. The



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new proposed addition to the second floor will add 665 square feet of living space to the house.

In order to implement the improvements proposed to the Property, the Applicants seek the following variance relief from the Board:

A. d(4) Floor Area Ratio Variance: Section 200-173.20 of the Land Use Ordinance ("LUO") permits a maximum Floor Area Ratio of 13% in the R-20 residential zoning district. Following the improvements to the Applicants' home, the Property would have a 17.8% Floor Area Ratio. A use variance is required.

B. Section 200-173.2C(2) Rear Yard Bulk Variance: In the R-20 residential zoning district a minimum rear yard is required to be 30 feet. The Applicants propose a 14 foot rear yard. A bulk variance is required.

C. Section 200-173.2E Maximum Improvement Coverage ("MIC"): In the R-20 residential zoning district, the maximum permitted improvement coverage is 20%. With the improvements proposed by the Applicants, the Property would have a 33% MIC. A bulk variance is required.

In evaluating this application, the Board should be guided by the following legal standards which are to be applied to these variance requests:

A. d(4) Floor Area Ratio Variance: Under Coventry Square vs. Westwood Zoning Board of Adjustment, 138 N.J. 285 1994), the Applicant is required to show "special reasons" for allowing more intense development on their property than otherwise permitted by the FAR regulations. The Applicants must demonstrate to the Board's satisfaction that their



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Property can accommodate any problems associated with an FAR ratio greater than that permitted in the R-20 residential zoning district. The Applicants must also address the "negative criteria" to satisfy the Board that by allowing additional Floor Area Ratio on the property due to the improvements which they propose there will be no substantial detriment to the public good and granting the variance relief will not substantially impair the intent and purpose of the R-20 residential zone plan for the neighborhood wherein the property is located. In this regard, the Board should focus on the impact that the additional development and consequently the additional floor area involved will have on any of the neighboring properties along Fisher Place.

B. c(1) Hardship Bulk Variance: As indicated above, the improvements proposed by the Applicants to the Property will involve a rear yard and MIC coverage variances for the property which involve a deviation from the required bulk regulations for the zone. In this context, the Board should take into consideration the undersized nature of the Property, as well as the Property configuration. Under Nash vs. Board of Adjustment of Morris Township, 96 N.J. 1984, the law requires that the Applicants demonstrate to the Board's satisfaction both the positive and negative criteria. The positive criteria would involve having the Applicants show that there are peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the Applicants to satisfy all of the R-20 bulk zoning regulations due to the size and configuration of the Property and the location of the Applicants' existing house on the Property which is proposed for substantial renovation. Again, for these bulk variances, the Board must be satisfied that the "negative criteria" has been met and that granting the two requested bulk



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variances will not have a negative impact on any of the adjacent properties along Fisher Place or be disruptive and out of character with the street scape in the neighborhood wherein the Property is located.

The Board, in order to approve the d(4) FAR variance, would require a positive vote by five of the seven members of the Board.

EWS/emh

cc: Samuel J. Surtees, West Windsor Township Land Use Manager  
Patricia Thompson, Zoning Board of Adjustment Secretary  
David Novak, P.P., Burgis Associates, Inc., Board Planning Consultants  
Daniel Dobromilsky, CLA, Board Landscape Architect  
Ian Hill, P.E., Van Cleef Associates, Board Engineering Consultant  
Joseph Como, Village Design, LLC, Applicants' Architect  
Robert Pisano, P.E., Applicants' Professional Engineer  
Daniel-Tello Flores and Christine Sfraga, Applicants.