

Memorandum

To: Chatham Township Planning Board
 From: Frank Banisch III, PP/AICP
 Date: March 27, 2024
 Re: Mayovska/Dmytryshyn - SUPPLEMENTAL REPORT
 Block 54, Lot 16 (5 Mountainview Road)
 Minor Subdivision with variances
 Zone: R-3

We have reviewed the following information in preparation of this report:

- Planning Board Application with attachments.
- Plan entitled, *Subdivision Plan*, prepared by Frederick Meola, PE/PLS, dated December 1, 2019, revised through December 25, 2023, consisting of two sheets.
- Architectural Plan prepared by Andrew Podberezniak, R.A. dated March 14, 2023, consisting of three sheets
- Wetlands assessment letter prepared by PK Environmental dated November 6, 2023.

Review Comments

1. The applicant seeks a minor subdivision of Block 54, Lot 16, to create two proposed Lots 16.01 and 16.02. The property is located at 5 Mountainview Road, consisting of approximately 31,665 square feet in the R-3 district. The site is currently developed with a 1 ½ story single-family dwelling and associated improvements in the north portion of the lot. The site is primarily lawn area with some established trees along the road frontages and rear of the lot.
2. The proposed subdivision will result in the following conditions, requiring variances for the majority of the dimensional requirements.

	Required	Existing Lot 16	Proposed Lot 16.01	Proposed Lot 16.02
Lot Area (Square Feet)	25,000 sf	31,665 sq. ft.	17,094** sf	12,821** sf
Lot Width Street	112'	184.31' (Fairmount) 119.14' (Chestnut)	175.85' (Mountainview) 115.07' (Fairmount)	110.6'*** (Chestnut) 103.85'*** (Fairmount)
Lot Depth	175'	215.44'	107.0'***	105.25'***
Front Yard	50'	33.2'*	19.5'*** (Fairmount) 33.2'***	43.5'*** (Fairmount) 30'***

			(Mountainview)	(Chestnut)
Side Yard (each)/combined	15/30'	27.5'	33.2'	15'
Rear Yard	50'	141.7'	66.4'	40.1' **
Building Height	35'/2.5 stories	1.5 stories	1.5 stories	34.48'/ 2 stories
Lot Coverage (SF)	5,419 (16.01) 4,564 (16.02)	3,412	3,412	3,025
Principal Building Coverage (SF)	2,426 (16.01) 2,169 (16.02)	1,820	1,820	1,851

* Existing condition, **Variance Required

3. In addition, the applicant requires the following design waivers:
 - Minimum Lot Depth where 175 feet is required and 107.0 feet is proposed for lot 16.01 and 175 feet for lot 16.02
 - Minimum usable lot area where 7,000 feet is required and 2,167 feet is proposed for lot 16.01 and 158 square feet is proposed for lot 16.02.

4. The applicant seeks to create two undersized lots. As noted in *Urban v. Planning Bd.*, 238 N.J. Super. 105 (App. Div. 1990):

“Under the MLUL all subdivisions are required to conform to the applicable provisions of the ordinance, N.J.S.A. 40:55D-38d, which may contain provisions regulating lot sizes and dimensions. N.J.S.A. 40:55D-65b. The planning board, in conjunction with subdivision review, may grant a variance to permit the creation of an undersized lot, *but only upon a showing of exceptional and undue hardship or upon proof that the purposes of the MLUL would be advanced and the benefits of the variance would substantially outweigh any detriment.* N.J.S.A. 40:55D-70c(1) & (2); N.J.S.A. 40:55D-60a.”(italics added)

5. The applicant is requesting a c(2), or "flexible c" variance. Such variances seek permission to deviate from the zone's dimensional requirements. The applicant must provide testimony satisfying the positive and negative criteria for granting the relief.

The "Positive" criteria requires that the applicant prove that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would *substantially* outweigh any detriment,;

The "Negative" criteria must show that the variance can be granted without substantial detriment to the public good, under the first negative prong. The second prong of the negative criteria require a demonstration that the variance will not substantially impair the intent or purpose of the zone plan (i.e. Master Plan), and the granting of the variance will not substantially impair the intent and purpose of the zoning ordinance. In this regard the evaluation is to determine if there is a direct impact on the neighboring properties, the neighborhood, and the general ordinance for the community. The action of the Township Committee, rezoning the R-4 area adjoining this property but not including this parcel in the R-4 Zone was the product of a deliberative process that

concluded that this lot should remain in the R-3 Zone along with all the lots on Fairmount Avenue.

6. The applicant should provide testimony regarding the proposed subdivision. Given the extensive variances required for the proposed subdivision, it is unlikely any alternative designs would reduce or eliminate any of the requested variances or waivers.
7. The property is located in the R-3, Residence District, which encompasses much of the more developed southern region of the Township and permits single-family dwellings on a minimum of 20,000 square foot lots. A pocket of the R-4, Residence District, is located just north of the site and permits single-family dwellings on 10,000 square feet. This pocket of R-4 in this area reflects existing development patterns at the time of zoning, while the subject property is located in the R-3 district, which consists of larger lot development, historic of the area. The location of the subject property in the vicinity of an R-4 zone is not reflective of the development pattern in and around the site, but rather a unique pocket of development that predates the zoning of the area.
8. Given the undersized and non-conforming nature of the proposed lots and construction of the new dwelling, any alterations or additions to the existing and proposed dwelling units will require board approval in the future.
9. The proposed new dwelling is located in the western portion of the lot, moving it away from the intersection of Fairmount Avenue and Chestnut Road. This reduces visual impact along that corner and provides site lines at that intersection.
10. The proposed driveway on lot 16.02 is central to the lot and will access Chestnut Road. I defer to the Board Engineer regarding the driveway's location in relation to the intersection. Moving the driveway further west from the intersection may reduce traffic impacts near the intersection.
11. Will any trees be removed as part of the proposed construction? Any tree removal and replacement must conform to the Township's ordinance.
12. Any approval by the Planning Board should be conditioned on approval by any other outside agency having jurisdiction over the subject matter.

cc: Kali Tsimboukis, Planning Board Manager
Planning Board Members
Steven Warner, Esq.
John Ruschke, PE
Frederick C. Meola, PE, PLS
Mariya Mayovska & Vasyl Dmytryshyn, applicants