

# Memorandum

To: Chatham Township Planning Board  
From: Frank Banisch III, PP/AICP  
Date: March 31, 2024  
Re: Mayovska/Dmytryshyn  
Block 54, Lot 16 (5 Mountainview Road)  
Minor Subdivision with variances  
Zone: R-3

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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 at 5 Mountainview Road consists of approximately 31,665 square feet in the R-3 district, where the minimum lot size is 20,000 square feet for interior lots and 25,000 square feet for any corner lot. Lot 16 exceeds the minimum lot size by 6,665 square feet.

2. 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.



3. The proposed subdivision will result in the following conditions, requiring variances for the majority of the dimensional requirements.

	<b>Required</b>	<b>Existing Lot 16</b>	<b>Proposed Lot 16.01</b>	<b>Proposed Lot 16.02</b>
<b>Lot Area (Square Feet)</b>	25,000 sf	31,665 sq. ft.	<b>17,094** sf</b>	<b>12,821** sf</b>
<b>Lot Width @ Street</b>	112'	184.31' (Fairmount) 119.14' (Chestnut)	175.85' (Mountainview) 115.07' (Fairmount)	<b>110.6'*** (Chestnut)</b> <b>103.85'*** (Fairmount)</b>
<b>Lot Width @ Setback</b>	125'	220.43' (Fairmount) 168.53' (Mountainview) 135.12' (Chestnut)	<b>113.76'*** (Fairmount)</b> 160.2' (Mountainview)	<b>106.96'*** (Fairmount)</b> <b>105.25'*** (Chestnut)</b>
<b>Lot Depth</b>	175'	215.44'	<b>107.0'***</b>	<b>105.25'***</b>
<b>Front Yard</b>	50'	33.2'*	<b>19.5'*** (Fairmount)</b> <b>33.2'*** (Mountainview)</b>	<b>43.5'*** (Fairmount)</b> <b>30'*** (Chestnut)</b>
<b>Side Yard (each)/combined</b>	15/30'	27.5'	33.2'	15'
<b>Rear Yard</b>	50'	141.7'	66.4'	<b>40.1'***</b>
<b>Building Height</b>	35'/2.5 stories	1.5 stories	1.5 stories	34.48'/ 2 stories
<b>Lot Coverage (SF)</b>	5,419 (16.01) 4,564 (16.02)	3,412	3,412	3,025
<b>Principal Building Coverage (SF)</b>	2,426 (16.01) 2,169 (16.02)	1,820	1,820	1,851

\* Existing condition

\*\*Variance Required

4. In addition, the applicant requires the following design waivers:
  - Minimum Lot Depth - 175 feet is required and 107.0 feet is proposed for lot 16.01
  - Minimum usable lot area - 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.
  
5. 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)

6. The applicant is requesting a c(1), or "hardship" 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 relief.

#### 7. Positive Criteria

The "Positive" criteria requires that the applicant prove that the strict application of the zone's bulk requirements would create practical difficulties because the lot is *undersized, shallow, especially narrow, or has some exceptional topographic conditions or physical feature* prohibiting the owner from satisfying the bulk requirements for the zone.

The only preexisting nonconforming condition that exists on Lot 16 today is the substandard front yard (50' required, 33' existing). However, as proposed, the subdivision would create 2 lots each requiring variances for lot area, lot width, lot depth, front yard and rear yard. These variances are not the result of any hardship. They are the result of a self-created condition that does not meet the positive hardship criteria. Private financial hardship affecting the owner do not qualify for relief.

#### 8. Negative Criteria

The "Negative" criteria require a showing that the variances can be granted without substantial detriment to the public good and that the granting of the variances will not substantially impair the intent or purpose of the zone plan (i.e. Master Plan), and zoning ordinance. In this regard, the Board must determine if there is a direct impact on the neighboring properties, the neighborhood, and/or the zoning ordinance intent.

The property is located in the R-3, Residence District, which encompasses most of the more developed southern region of the Township and permits single-family dwellings on a minimum of 20,000 square foot lots (25,000 sf for corner lots). A pocket of the R-4 Residence District, which permits single-family dwellings on 10,000 square foot lots, is located just north of the site. The small lot pattern that pervades this small pocket of R-4 reflects preexisting subdivision and development patterns.



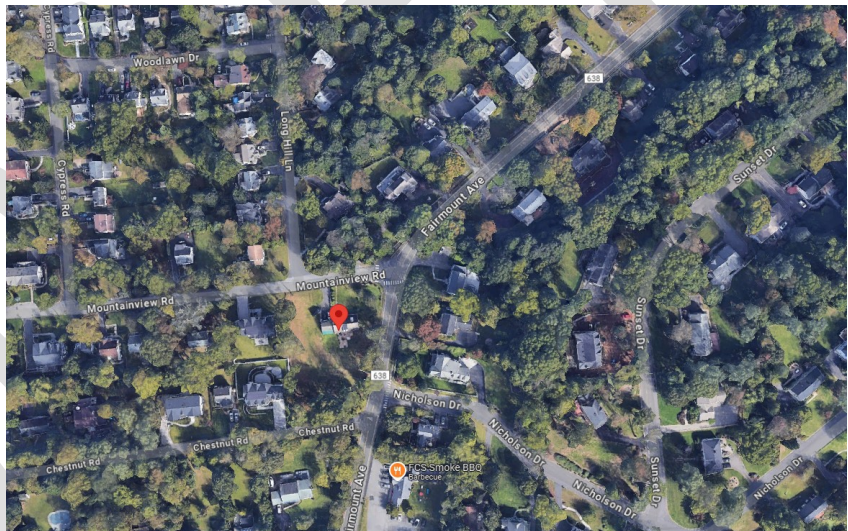
Ord. No. 2016-19 amended the zoning districts as adopted on the Zoning Map dated

March, 1999, revised October, 2016 to change the zoning district classification on the official zoning map from the R-3 Residence District to R-4 Residence District for the following properties:

- Block 54, Lot 10
- Block 54, Lot 11.01
- Block 54, Lot 11.02
- Block 54, Lot 12
- Block 54, Lot 13
- Block 54, Lot 14
- Block 54, Lot 15.

The Township Committee determined in 2019, at the time other lots were rezoned to R-4, that the subject property should be located in the R-3 district, which consists of larger lots along Fairmount Road and beyond, as seen on the Zoning Map excerpt. Thus, it seems clear that when the Township Committee expanded the R-4 zone in the vicinity of Lot 18 in 2019, the dividing line between smaller and larger lots was the basis for the change.

9. 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 farther west from the intersection may reduce traffic impacts near the intersection.



10. Will any trees be removed as part of the proposed construction? Any tree removal and replacement must conform to the Township's ordinance.
11. 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