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August 5, 2024

Ms. Diana Chandler-Zimmerman  
Board Secretary  
Township of West Orange Zoning Board of Adjustment  
66 Main Street  
West Orange, NJ 07052

Re: **Planning Review Letter**  
6 Mountain Way  
Block #45.06, Lot #3  
Application for C Variance  
**ZB-24-08**

Dear Ms. Chandler-Zimmerman,

This office has reviewed the application submitted by *James Wallace, Jr.* ("**Applicant**"). The Applicant filed an application with the West Orange Board of Adjustment for a "C" Bulk Variance for an uncovered deck into the required rear yard setback. The subject property is located with the Township's R-5 zone, which requires a 30-foot rear yard setback. Under §25-8.2(A), an unroofed terrace may not project more than eight (8) feet into the required rear yard. The proposed deck would have a 15-foot setback from the rear yard, meaning the proposed deck encroaches 7 feet beyond the permissible encroachment.

In preparation of this memorandum, the following documents were reviewed:

1. Township of West Orange Application Form for the Planning Board or Board of Adjustment, dated June 11, 2024.
2. Project Description.
3. Reasons for Relief.
4. Survey, prepared by Richlan, Lupo & Associates, dated March 22, 2017
5. Survey with new open deck shown.
6. Deck elevations
7. Verification of Taxes & Sewer Charges Paid, dated June 18, 2024.
8. List and Buffer Report Map of Property Owners to be Served Notice, dated July



- 3, 2024.
9. Photographs of property, undated.
  10. Correspondence from Gessie Dorisca, located at 23 Devon Drive, dated June 17, 2024.
  11. Email correspondence from Michael Poris, located at 4 Mountain Way South, dated June 16, 2024.
  12. Correspondence from Viliam and Caroline Brindzak, located at 21 Devon Drive, dated June 19, 2024.
  13. Affidavit of Service with certified mail receipts, dated July 30, 2024.
  14. Newspaper Ad confirmation to the Star Ledger, dated August 2, 2024.
  15. Building Elevations
  16. Construction Permit application.

### Property Information

The property that is the subject of this Application is commonly known as 28 Prospect Place and identified as **Block 45.06, Lot #3** in the municipal tax records for the Township of West Orange. The site contains a single-family home on a dead-end street. The surrounding land uses are consistent with the permitted zoning of the R-5 zone.

The property survey indicated a parcel with the dimensions of 70 feet in width and 100 feet in depth, creating a 7,000 square foot property. The minimum dimensions for properties located in the zone is 10,000 square feet, indicating an undersized property. Furthermore, with a required minimum lot width of 75 feet, the property would need approximately 133.33 in lot depth to meet the minimum lot area requirements. As noted, 100 feet in provided, indicating a shallow lot relative to the zone requirements. While actual topographic information was not available, a site visit indicated the yard slopes downward from the front yard into the year yard. Also, the adjacent street to the east, Devon Drive, is at a lower elevation than Mountain Way South.



*Figure 1: Aerial Image of the site at 6 Mountain Way South is outlined in yellow.  
Source: NJ-GeoWeb*



*Figure 2: Front yard of 6 Mountain Way South*



*Figure 3: Front yard view of 6 Mountain Way South - garage side*

### Project Overview

The applicant, George Wallace, Jr. proposes to construct a new 175 square foot deck in the rear yard. Under **§25.8.2(A) Yard Encroachments**, unroofed terraces may not project more than 8 feet into the required rear yard. The required rear yard setback in the R-5 zone is 30 feet and the proposed rear yard setback with the deck is 15 feet, meaning the proposed deck encroaches by 7 feet. It appears the existing single family home is already constructed within the required rear yard, and the less than optimal yard depth is a factor in the home's location. This requires a "C" variance.

Additionally, the project increases the existing impervious surface coverage from 51.15% to 53.65%, where 45% is permitted. Again, the substandard lot size affects how improvements within the property affect these percentages. On the application, the existing building coverage is noted to increase from 33.69% to 36.19%, where 35% is permitted. However, unroofed terraces are excluded from building coverage calculations, so the building coverage remains 33.69% and compliant with the zoning requirements.



## Zoning (§25-7.1)

This application is located within the Township's R-5 Zone, which is generally described as permitting one-family dwellings on 10,000 square foot lots.

## Definitions (§25-4)

### **Yard**

Shall mean and include:

2. REAR Shall mean an open space on the same lot with a building, between the rear line of the lot and the rear line of the nearest roofed portion of the building and extending from side property line to side property line.

### **BUILDING GROUND COVERAGE**

Shall mean the horizontal area of the ground floor of all buildings, measured between exterior faces of foundation walls, but excluding the area of unroofed porches and terraces

### **LOT COVERAGE**

Shall mean that portion of a lot which is covered by parking areas and any impervious surface including but not limited to principal and accessory, structures, driveways, patios, sidewalks, etc.

## Planning Comments

### **Bulk "C" Variances**

N.J.S.A. 40:55D-70c sets forth the criteria for a planning board to grant variance from bulk requirements of zoning ordinance. Two types of "c" variances can be granted:

(c) 1: in cases of hardship, such as "exceptional narrowness, shallowness or shape of specific piece of property," or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

(c) 2: where the purposes of zoning would be advanced, and the benefits derived by the variance would outweigh any detriments.

The applicant must also meet the negative criteria of the statute for the granting of a "c" variance, wherein a variance can be granted only "without substantial



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detriment to the public good” and where it “will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

Respectfully submitted,

George Wheatle Williams, PP, AICP  
Principal, Nishuane Group, LLC.

Erik DeLine, PP, AICP, LEED AP  
Associate, Nishuane Group, LLC.