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May 8, 2020

## **PLANNING REPORT**

Planning Board  
Borough of Montvale  
12 Mercedes Drive  
Montvale, NJ 07645

Re: Borough of Montvale  
26 North Kinderkamack Road  
Block 1601, Lot 7  
Review Letter #1  
MC Project No. MPP-142

Dear Board Members:

The Borough of Montvale, the Applicant and contract purchaser of the property, seeks use variance approval to permit the conversion of the existing mixed-use building on the property into a two-family affordable dwelling. It is this office's understanding that the Borough, upon receiving approval, would convert the building into two affordable housing units to receive credits towards its State-mandated affordable housing obligation. No expansion of the building is proposed, nor are any site improvements. The Application requires a "D(1)" use variance and a "C" variance, which are detailed in Section B.

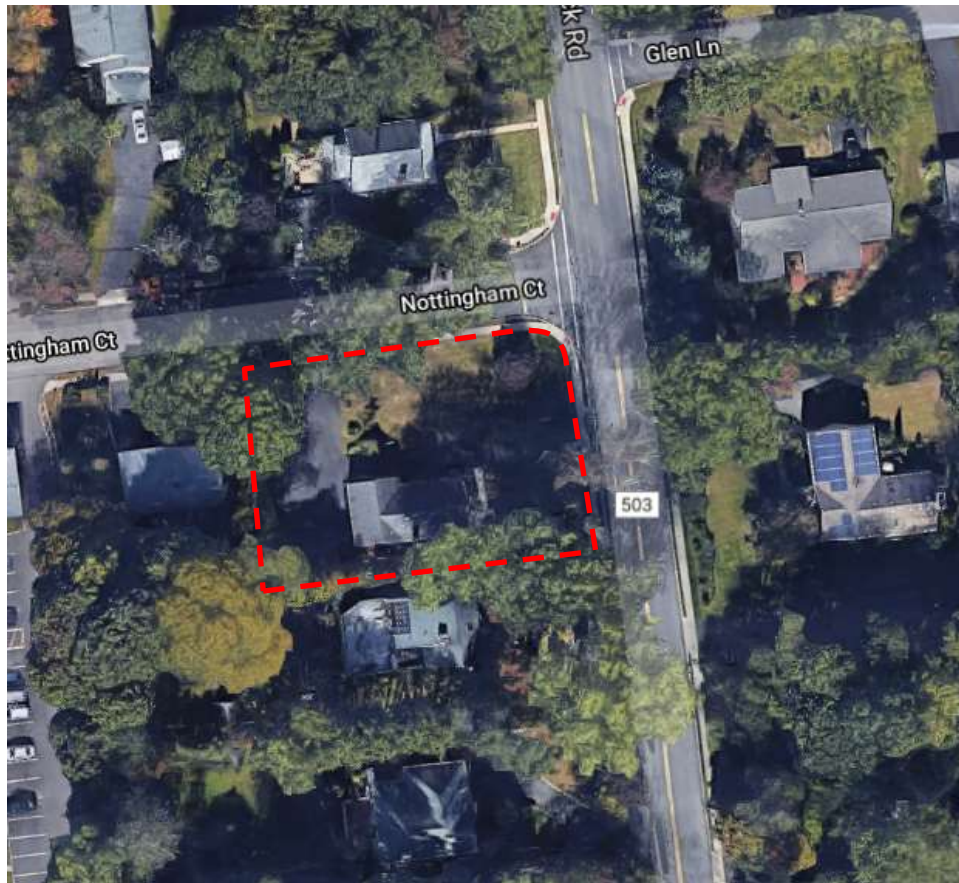
The following documents, which were submitted in support of the Application, have been reviewed:

1. Survey entitled "Survey of Property at 26 North Kinderkamack Road, author unknown, date unknown, consisting of 1 sheet.
2. Zoning Variance Application, dated April 7, 2020.
3. Zoning Letter of Denial, prepared by Jeffrey Fette, Borough Zoning Official, dated March 30, 2020, consisting of 1 page.

### **A. Existing Zoning and Surrounding Land Use**

The site is located at 26 North Kinderkamack Road at the corner of North Kinderkamack Road and Nottingham Court. The site is currently occupied by a two-story building with a podiatrist office on the first floor and an apartment on the second floor. The site is located in the R-15 District. The site is surrounded by single-family dwellings. In addition, the Nottingham Court multi-family

development is located to the west of the site. This development is zoned AHO-16. See the image below for general location of the subject site.<sup>1</sup>



Yard and bulk requirements in the R-15 District are as follows:

- Minimum Lot Area – 15,000 square feet
- Minimum Lot Width – 125 feet
- Minimum Front Yard Setback – 55 feet<sup>2</sup>
- Minimum Side Yard Setback (one) – 15 feet
- Minimum Side Yard Setback (both) – 40 feet
- Minimum Rear Yard Setback – 40 feet
- Maximum Building Coverage – 20%
- Maximum Lot Coverage – 35%
- Maximum Number of Families per Lot - 1
- Maximum Building Height – 2 stories/28 feet

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<sup>1</sup> Image from <http://www.google.com/maps>

<sup>2</sup> Measured from the original center line of the street.



## **B. Variances**

The Application requires the following “D” variance:

1. Section 128-5.1A – D(1) variance for use. The Ordinance permits residences for not more than one family.

The Applicant proposes a two-family affordable dwelling.

The Application requires the following “C” variance:

1. Section 128-6.3 – Variance for number of families. The Ordinance permits one family per lot in the R-15 District.

The Applicant proposes to convert the structure into two housing units, with two families.

Additionally, the property has the following pre-existing non-conforming conditions:

1. Section 128-6.3 – The Ordinance requires a minimum rear yard setback of 40 feet. The existing dwelling has a rear yard setback of 12.3 feet.<sup>3</sup>
2. Section 128-6.3 – The Ordinance limits the lot coverage to 35%. The existing property has a lot coverage of approximately 39%.<sup>4</sup>

## **C. Variance Proofs**

### *“D(1)” Variance*

Pursuant to the Municipal Land Use Law, a “D” variance requires the Applicant to demonstrate to the Board that the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent of the zone plan and zoning ordinance. The Applicant also needs to demonstrate to the Board, by a showing of “special reasons”, that the site is peculiarly suited for the particular use being proposed. However, special reasons include when a proposed project is an inherently beneficial use.

1. Positive Criteria (Special Reasons):

The Applicant must demonstrate that the particular use is peculiarly fitted or particularly suitable to the site and its setting and that special reasons exist to support the grant of the variance application. These special reasons exist when one or more purposes of zoning are promoted (N.J.S.A. 40:55D-2).

The court also found in Saddle Brook Realty v. Board of Adjustment, 388 N.J. Super. at 76, that there are three categories of circumstances where the “special reasons” may be found where: (1) the proposed use inherently serves the public good; (2) the property owner would suffer “undue hardship” if compelled to use the property in conformance with the

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<sup>3</sup> Note that the Zoning Letter of Denial identifies the rear lot line as the property line opposite Nottingham Court.

<sup>4</sup> 39% is sourced from the Zoning Letter of Denial.

permitted uses of the zone; or (3) the use would serve the general welfare because the “proposed site is particularly suitable for the proposed use”.

2. Negative Criteria:

The Applicant must demonstrate that the grant of the variance would not be substantially detrimental to the public good or substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

Regarding the “substantial detriment to the public good” prong of the negative criteria, the court affirmed in Medici v. BPR Co., 107 N.J. 1, that the focus is on the impact of the proposed variance upon the adjacent properties and whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good”.

The court also stated, with regard to the “substantial detriment to the zone plan and zoning ordinance” prong of the negative criteria, that “the added requirement that boards of adjustment must reconcile a proposed use variance with the provisions of the master plan and zoning ordinance will reinforce the conviction expressed in Ward v. Scott [11 N.J. 117 (1952)], the negative criteria constitute an essential ‘safeguard’ to prevent the improper exercise of the variance power” (107 N.J. 22).

*“C” Variance*

NJSA 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the C(2) or flexible C variance where 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.

**D. Comments**

Based on our review of the above-referenced materials, we offer the following comments:

1. Montvale, like every other municipality in the State of New Jersey, has a constitutional obligation to provide affordable housing. The Borough successfully obtained a Judgment of Compliance and Repose in October of 2018 regarding its Third Round Obligation (1999-2025). Montvale received a Vacant Land Adjustment for its Third Round Obligation, which divides the obligation into a Realistic Development Potential that must be satisfied and an Unmet Need, which must be addressed. The Borough has always been proactive in planning for affordable housing. In fact, since the issuance of the Judgment Montvale has evaluated several options for affordable housing units that were not included in the Housing Plan. The subject Application by the governing body demonstrates Montvale’s ongoing



commitment to provide affordable housing through a unique mechanism, which eliminates market-rate units that normally accompany affordable housing.

2. The concept of an “inherently beneficial” use was judicially created to deal with a relatively narrow range of enterprises so universally considered to be of community value that municipalities should be favorably disposed toward their inclusion. Regarding 100% affordable housing, there are several cases ruling that it is considered an inherently beneficial use. Most notably is *Homes of Hope v. Eastampton Twp. Land Use Planning Board*. Therefore, the use satisfies the positive criteria.
3. As for the negative criteria, there are no changes proposed to the building size or new site improvements. The site will be converted from one residential unit and a podiatrist office to two residential units. The elimination of the office use and replacement with a residential use will likely result in less traffic to and within the site. For these reasons, we see no substantial detrimental impact to the public good.
4. The second prong of the negative criteria looks at whether or not the granting of the use variance will substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. The Borough’s last comprehensive Master Plan was adopted in 2008 and one of its goals is to “provide affordable housing at a reasonable cost”. Additionally, the 2018 Housing Element and Fair Share Plan notes as its goal “to provide the planning context in which access to low- and moderate-income housing can be provided in accordance with the requirements of the Fair Housing Act and the laws of the State of New Jersey in a manner that fits within the scale and character of the Borough of Montvale”. The granting of this use variance would advance both of these goals. Furthermore, the site is only one lot removed from the AHO-16 Zone, which is an inclusionary housing zone.
5. The Board should note that the Borough’s 2018 Affordable Housing Trust Fund Spending Plan, approved by the Board, Borough Council, and the Court, recognized that the Borough has an Unmet Need and allocated funding to create new affordable housing units through unique opportunities. The Spending Plan allocates up to \$450,000 for the purchase of existing homes and conversion to affordable housing units. Therefore, Montvale is able to fund the purchase of the subject site through the Affordable Housing Trust Fund.
6. Additionally, the Board should note that once the conversion is completed, the site would be eligible for two affordable housing credits.
7. The Application materials do not indicate the number of bedrooms for each of the dwelling units. The Applicant should provide testimony on the number of bedrooms in the existing apartment and the estimated bedrooms in the new apartment.



Should you have any questions with regard to the above comments, please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in blue ink that reads 'Darlene A. Green'.

Darlene A. Green, P.P., AICP  
Borough Planner

DAG:hk

cc: Lorraine Hutter, Board Secretary (via email [lhutter@montvaleboro.org](mailto:lhutter@montvaleboro.org))  
John DePinto, Board Chair (via email [jdepinto@montvaleboro.org](mailto:jdepinto@montvaleboro.org))  
Andrew Hipolit, Board Engineer (via email [ahipolit@maserconsulting.com](mailto:ahipolit@maserconsulting.com))  
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