

**Introduced by:**

**Seconded by:**

**BOROUGH OF MONTVALE**

**PLANNING BOARD**

**RESOLUTION GRANTING A USE VARIANCE AND  
VARIANCE RELIEF PERTAINING TO SIGNAGE TO  
MONTVALE DEVELOPMENT ASSOCIATES, LLC AND  
A USE PERMIT TO CITY MD FOR PREMISES  
DESIGNATED AS BLOCK 2802, LOT 2 (COO1A)**

**WHEREAS**, application has been made to the Planning Board of the Borough of Montvale (“the Board”) by Montvale Development Associates, LLC (“the applicant”), c/o Antimo A. Del Vecchio, Esq., Beattie Padovano, LLC, 50 Chestnut Ridge Road, Suite 208, Montvale, New Jersey, for a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* and variances pertaining to signage pursuant to *N.J.S.A. 40:55D-70c* relating to premises known as Block 2802, Lot 2 (COO1A) as depicted on the tax assessment map of the Borough of Montvale, being located on Grand Avenue West and Mercedes Drive (“the premises”, “the parcel”, “the property” or “the site”); and

**WHEREAS**, the applicant is the owner of record; and

**WHEREAS**, an application for use and occupancy approval and approval of signage has been simultaneously filed by City MD (“the use applicant”), 1345 Avenue of the Americas, 8<sup>th</sup> Floor, New York, New York 10105, with said application having been consented to by the property owner; and

**WHEREAS,** the Planning Board considered both applications at a public hearing held on May 19, 2020 and has made certain findings of fact and conclusions with respect to same; and

**WHEREAS,** the Planning Board has had the benefit of the reports of its professionals and has deliberated on the matters brought forth at said public hearing, at which time members of the public were afforded an opportunity to be heard; and

**WHEREAS,** the Planning Board has made certain findings of fact and conclusions with respect to said application.

**NOW THEREFORE BE IT RESOLVED** by the Planning Board of the Borough of Montvale that the following facts are made and determined:

1. The subject property comprises approximately 25.79 acres in the AH-PUD Affordable Housing-Planned Unit Development Zone pursuant to Ordinance No. 2013-1374 (“the Ordinance”). Consistent with the Ordinance and site plan and other approvals granted by the Board, a retail mall complex known as the Shoppes At De Piero Farms has been constructed on the premises. The first phase of the development comprises a Wegmans Supermarket as an anchor retail store, and six (6) additional buildings which have various lifestyle retail uses consistent with the aforesaid Ordinance and site plan and ancillary approvals.

2. The applicant seeks a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* to permit occupancy by City MD of the entire floor area consisting of 5,106 square feet in Building E as a medical office. This use is not permitted

in the AH-PUD District and accordingly a use variance is required. Variance relief pertaining to signage is also required for the City MD use, which relates to two (2) signs, one of which would exceed the permitted signage area of thirty-six (36) square feet. The aggregate area of the two (2) signs would exceed the maximum permitted area of sixty (60) square feet.

3. In addition to the signage variances for the proposed City MD use, variance relief pertaining to signage is also required for the existing Lululemon Athletica (“Lululemon”) use, with approval sought for a third sign and to exceed the total sign area of sixty (60) square feet. A third sign is also proposed for Chase Bank, and to also exceed the sixty (60) square foot maximum permitted area for signage. A use permit is also sought for the City MD use in a separate application.

4. At the public hearing held on the application on May 19, 2020, both applicants were represented by Antimo A. Del Vecchio, Esq. In an opening statement, counsel noted that City MD seeks to occupy the 5,106 square feet of floor area comprising Building E. Two (2) signs are proposed, with the rear wall sign just under thirty (30) square feet (29.89) in area, and the front wall sign at 40.64 square feet, and the total signage area at 70.53 square feet. Additional signs are proposed for Chase and Lululemon, both of which would have a new hanging sign with dimensions of three (3) feet by eight (8) feet, or twenty-four (24) square feet. As a result, the aggregate signage areas of both uses would exceed sixty (60) square feet. In this regard, the approving resolution for Chase indicates existing signage area at 56.7 square

feet (36 and 20.7 square feet), which would increase to 80.7 square feet with the third sign. The Lululemon signage area would increase from 36.58 square feet to 60.58 square feet.

5. At this point in the public hearing, counsel for the applicant marked into evidence the following exhibits:

Exhibit A-1	Affidavit of Notice
Exhibit A-2	Signage Plans for City MD (5 sheets) revised to May 13, 2020
Exhibit A-3	Signage Plans for Chase (3 sheets) dated March 4, 2020
Exhibit A-4	Signage Plans for Lululemon (3 sheets) dated February 12, 2020
Exhibit A-5	Overall Site Location Exhibit prepared by L2A dated May 14, 2020

6. The applicant presented as its first witness Dr. Nedal Shami, a physician and one of the ten (10) doctors who founded City MD in late 2010, and now serves as the applicant's chief health officer. He stated that City MD has as its mission the providing of quality and accessible health care and a simplified experience with the highest quality of service. The business first started on the Upper East Side of Manhattan and presently has 123 locations, with seventeen (17) in New Jersey and six (6) in Bergen County, with locations closest to Montvale being on Route 17 in Ramsey and Route 4 in Paramus. Patients can access these facilities without an appointment, and he noted many patients, approximately 70-80%, experience sudden episodes requiring immediate treatment. The applicant's locations do not treat life threatening

illnesses such as heart attacks. A portion of their patients, some 20%, relate to employee screening requested by employers.

7. Continuing his testimony, Dr. Shami stated that City MD is proud of its role in addressing the current COVID 19 pandemic. The facilities take appropriate steps to minimize, mitigate and manage risk. Employees returning to work are tested, with City MD testing several thousand persons per day. Facilities are sterilized nightly, and the average wait time, in 90 to 95% of cases, is six (6) minutes. Dr. Shami stated that the subject building is particularly appropriate for the applicant, with the building somewhat separated from other uses in the complex. He indicated that the eleven (11) rooms will exceed what is needed, with the floor area providing more than ample capacity. City MD permits patients to register on-line, with an efficient appointment process intended to streamline access. Two (2) doctors would be located on the premises, and on average City MD, prior to the pandemic, would see forty (40) to fifty (50) patients per day. Dr. Shami believes that parking at the site is adequate. In response to a question, he stated that the City MD office in Ramsey is freestanding, with the Paramus location sharing the building with another tenant.

8. Testimony in support of the application was provided by Richard M. Preiss, a licensed professional planner who was qualified in this field. Commencing his testimony, Mr. Preiss stated that he visited the site on several occasions, reviewed the surrounding area, plans and exhibits and familiarized himself with City MD and its operations. He also reviewed the Zoning

Ordinance and Master Plan, noting that he had drafted the provision governing the AH-PUD District during the period when he served as the Borough's planner. He referenced the location as Building E as reflected on Exhibit A-5, which he described as a "red barn-like building" comprising 5,106 square feet of floor area. A total of two (2) wall signs are proposed, on the front or west side and on the rear or east side of the building. The prior request for a third sign on the south or side façade of the structure has been withdrawn.

9. Continuing his testimony, Mr. Preiss next focused on the proofs required for approval of a *d(1)* use variance, noting that under the **Medici** decision special reasons must be shown in the form of the site being particularly suitable for the proposed use. To meet the negative criteria, it is required that the proposed use can be reconciled with the Master Plan and Ordinance, in addition to the requisite showing that the use variance may be granted without substantial detriment to the public good. Mr. Preiss noted that City MD has 123 locations, seventeen (17) in New Jersey and six (6) in Bergen County, with most in shopping centers or stand-alone buildings. He stated that while a walk-in medical facility is not an inherently beneficial use such as a hospital or nursing home, such a use serves the public interest, particularly under the ongoing circumstances of the current pandemic.

10. The planner referenced the fact that work on creating the regulations for the AH-PUD District began nearly ten years ago, at a time when an urgent-care medical facility was not deemed to be part of a shopping center retail complex. At that time, medical offices were permitted in the B-1 and 2

Zones and in the various OR Districts. He stated that the retail sector in Montvale is currently being transformed, with the subject property and the under-construction North Market complex opposite the site on Mercedes Drive together becoming the town retail center, with the existing B-1 areas along Kinderkamack Road becoming a more local retail center. He added that the retail sector has suffered considerably, which he attributed to the proliferation of on-line shopping and competition among retailers, and that the current pandemic will force many retail businesses to cease operation. The planner stated that shopping centers have become popular for services, such as medical care, which cannot be obtained via the Internet. The subject complex has a number of such uses, including food establishments and exercise facilities, and that a medical use serving the municipality and nearby area is a particularly appropriate use for the shopping center. Mr. Preiss stated that adding a medical facility will be an overall positive benefit to the community, both for existing and future residents.

11. The Board was advised by Mr. Preiss that the site is particularly suitable for the medical office and that the use may be reconciled with the fact that it is not permitted in the AH-PUD District. Mr. Preiss stated that permitting the medical use will promote purposes of the Municipal Land Use Law ("MLUL"). More particularly, he stated that the medical facility will be consistent with the planned unit development character and use of the site as set forth in *N.J.S.A. 40:55D-2k*. The retail medical use will meet the needs of residents for care, providing space for such use in an appropriate location, as

set forth in *N.J.S.A. 40:55D-2g*. The proposed use, by its character, will promote the purposes of the public health, safety and welfare, as set forth in *N.J.S.A. 40:55D-2a*. He stated that approval of the use variance would cause no harm to the public good, and that the relief should be granted. Mr. Preiss added that the North Market development across Mercedes Drive will have some 300 residential units, with the Chair noting that another 185 units will be developed on a portion of the Sony site nearby. Both stated that the changes to the surrounding area have been substantial since the AH-PUD District was created.

12. A similar opinion was voiced by Borough Planner Darlene Green, whose report dated May 8, 2020 was marked into evidence. She stated that she agrees with the opinions of Mr. Preiss, noting the changes that have impacted retail uses in the market, as well as changes and new development in the nearby area. As evidence, she cited the North Market project on the former Mercedes-Benz site to the west of the subject premises which is under construction. This property is located in the Mixed-Use Planned Unit Development (M-PUD) District which permits medical uses.

13. The signage variances implicated by the application were next addressed by Mr. Preiss who referenced Exhibit A-2 which depict the two proposed City MD signs (Drawings SK-1 and SK-3), with a third sign depicted (Drawing SK-2) no longer being proposed. He described the signage as having channel-cut letters, and referenced Sheet SK-4 of Exhibit A-2 which depicts night views of the signs. The front sign (Sheet SK-1 of Exhibit A-2) has an area



of 40.64 square feet, in excess of the maximum permitted area of thirty-six (36) square feet, thus requiring a variance. The rear sign has an area of 29.89 square feet. The total signage area of 70.53 square feet, or 10.53 feet in excess of the sixty (60) square foot requirement, also requires variance relief.

14. Addressing the criteria for the variances, Mr. Preiss stated that the relief may be justified pursuant to *N.J.S.A. 40:55D-70c(2)* as providing the same purposes of the MLUL as the *d(1)* relief. The variances, in his opinion, will promote public health, safety and general welfare, permit the providing of sufficient space for a use meeting the needs of citizens, and further a planned unit development, purposes *a, g* and *k* of *N.J.S.A. 40:55D-2*. He stated that the signs provide safety and convenience to patients accessing the medical use, allowing an appropriate identification of the business by arriving vehicles. Granting the variances pertaining to signage will, in his opinion, cause no harm to the public good, and that the benefits to the site and area will outweigh any detriment. He noted that if the Barn building (Building E) had three (3) tenants occupying the 5,106 square feet of space, each tenant would be permitted to have a sign with an area of thirty-six (36) square feet, or a total sign area of 108 square feet. He stated that this further justifies the granting of relief under the *c(2)* criteria. Ms. Green stated that she agreed with Mr. Preiss, finding that the relief may be granted under the *c(2)* standard, stating that the signs are “attractive and proportional”, and that no detriments will ensue by the granting of the variance relief.

15. The applicant called as a witness Michael Dipple of L2A, a licensed professional engineer who was qualified in this field and was the design engineer for the shopping complex. Commencing his testimony, he focused on the adequacy of parking for the proposed use. He stated that multiple studies indicate a parking demand for a use similar to applicant's at 3.89 spaces per 1,000 square feet. The proposed medical facility would generate peak demand during the morning hours, when other uses at the mall are not at peak business times. He stated that the type of use proposed would have a peak demand of 11:00 a.m., and Dr. Shami agreed with this opinion. Mr. Dipple noted that Building E where the use would be located is somewhat apart from other uses in the complex, and that the parking in this area is adequate to support the use. The engineers for the Board in attendance, Borough Engineer Andrew R. Hipolit and Chris Dour of Maser Consulting, agreed with Mr. Dipple. Mr. Hipolit noted that if Building E was divided so as to have three (3) tenants, more traffic would be generated.

16. In response to a question, Dr. Shami stated that City MD follows applicable protocols and requirements of the CDC and health agencies. Employees are tested and screened regularly. Precautions are taken and PPE utilized, with waiting areas at less than fifty (50%) percent capacity.

17. Planner Preiss next addressed the additional signage sought by Chase and Lululemon, which will be hanging signs the same as exist for other tenants. The hanging signs proposed by the two tenants will be three (3) feet by eight (8) feet, or twenty-four (24) square feet, will be lit by a ground-mounted

source, and will not be internally illuminated. The proposed hanging signs will constitute a third sign for each tenant. Chase currently has signs on the front and side (facing south), and Lululemon has a sign over the front door and a blade logo off the front elevation. Mr. Preiss referenced the depiction of the proposed signs on Exhibits A-3 and 4, stating that the hanging signs will be similar to existing tenant signs at Buildings B and C and will permit appropriate identification of these uses. The variance relief is required in that three (3) signs are not permitted and the aggregate signage area would exceed sixty (60) square feet. Permitting the signs in his opinion will provide safety and convenience to patrons of the businesses.

18. Counsel for the applicant noted that a number of uses in the shopping complex received *d(1)* use variance relief, including Club Pilates, Cycle Bar, C-2 Education, Orangetheory Fitness and Chase. He stated that this constitutes evidence of the expansion and diversification of retail uses. He emphasized that the medical facility will assist with the need for medical care, particularly during a crisis such as the current pandemic. He urged the Board to approve the *d(1)* use variance.

**BE IT FURTHER RESOLVED** by the Planning Board of the Borough of Montvale that based upon the above finds of fact, that the following conclusions are made and determined:

1. The within application seeks variance relief pursuant to *N.J.S.A. 40:55D-70d(1)* to permit a medical office comprising 5,106 square feet to be located in Building E at the Shoppes At De Piero Farm. A use variance is

required in that a medical office is not listed as a permitted use in the AH-PUD District. See §128-5.14C(2)(b). Since this use is not specifically permitted, it is deemed prohibited. See §128-5.14E(1). In addition to a use variance, signage variances are required for the proposed occupant of the premises, City MD, pertaining to the two (2) signs proposed. As noted above, one of the signs is proposed to have an area of 40.64 square feet, in excess of the maximum permitted area of thirty-six (36) square feet, thereby requiring variance relief pursuant to *N.J.S.A. 40:55D-70c*. A second variance relating to signage pertains to the total signage area of the two (2) proposed signs which would aggregate 70.53 square feet in excess of the maximum permitted sign area of sixty (60) square feet. City MD also seeks approval of a use permit to occupy the entirety of Building E at the shopping complex.

2. In addition to the relief pertaining to the City MD use enumerated in the immediate preceding paragraph, the applicant also seeks variance relief pertaining to signage for two (2) existing tenants at the shopping complex, Chase Bank and Lululemon Athletica. More particularly, each tenant seeks a third sign, in the form of a hanging sign. The size of each hanging sign will be a compliant twenty-four (24) feet. However, the aggregate area of the three (3) signs of each tenant would exceed the maximum permitted area for signage of sixty (60) square feet.

3. The applicant presented testimony from its planner, Richard M. Preiss, who indicated his familiarity with both the subject property and the provisions in the Zoning Ordinance applicable to the AH-PUD District. He

provided the Board with a detailed history of the AH-PUD District, noting that at the time when work commenced to draft regulations pertaining to such a Zone for the subject property, a medical use was not considered as a permitted use for a lifestyle retail center such as the subject property. In the nearly ten (10) years since these regulations were first drafted, there has occurred dramatic changes in both the retail sector of the economy, as well as in the area proximate to the subject premises. Mr. Preiss stated that changes in the retail sector, including increased competition, the popularity of on-line retailers, and the increase in purchases on-line have been detrimental to the viability of retail centers in recent years. Shopping centers are undergoing a transformation to providing services and uses which cannot be provided on the Internet. Uses approved at the subject property are evidence of this change. In the past two years, approvals have been granted to various “experiential-type” uses, including Club Pilates, Wind Wellness Center (yoga), Cycle Bar (indoor cycling), Orangetheory Fitness (fitness studio, personal training) and C-2 Education (personalized educational services and tutoring). These uses were all sanctioned by the granting of use variances pursuant to *N.J.S.A. 40:55D-70d(1)*. None of these uses were deemed to be retail uses at the time the AH-PUD District regulations were developed; in fact, many of these uses were in their early stages if they existed at all.

4. The area surrounding the Shoppes At De Piero Farm has similarly been transformed in the intervening period. As Mr. Preiss has noted, the subject property, together with the development of the former Mercedes-Benz

property, now known as North Market, changes the character of this area to a substantial retail center. North Market will contain some 300 residential units in addition to retail and commercial space. As noted by Borough Planner Green, medical office uses will be permitted at North Market. In addition, other development has been approved nearby, including 185 residential units in the Borough on a portion of the former Sony property.

5. The conditions detailed in paragraphs 3 and 4 above compel, in the Board's opinion, a conclusion that the subject property is particularly appropriate for the proposed medical facility and that the granting of a *d(1)* use variance will serve the general welfare. See **Medici v. BPR Co.**, 107 N.J. 1, 18 (1987). A medical office use at the premises will "meet current needs of nearby areas which have already been developed and future needs of other nearby areas which have not yet been developed". **Ward v. Scott**, 16 N.J. 16, 22 (1954). As noted by Dr. Shami in his testimony, City MD is community-based, generating patients within a mile to two mile radius. The Board believes that a medical office use at the shopping complex is particularly appropriate for this location and that the general welfare will be promoted. Accordingly, special reasons exist for the granting of the *d(1)* use variance.

6. The Board also finds that the shopping complex is particularly suitable for the medical facility proposed, which will be among a variety of uses located on the property. Testimony has demonstrated that Building E is a structure somewhat isolated and separated from other uses at the site. The structure is a "stand-alone" building having no other occupants, which is

appropriate for a medical use. Testimony also demonstrated that parking is adequate and available in this area of the retail complex. These conditions constitute additional reasons for determining that the site is particularly suitable for the proposed medical facility.

7. The Board accepts the testimony of the applicant's planner, which was confirmed by the Borough planner, that the granting of the use variance for the medical facility will promote three (3) purposes of the MLUL as set forth in *N.J.S.A. 40:55D-2*. More particularly, the nature of the use itself will promote the public health and general welfare, provide sufficient space for a variety of uses, including a health facility serving the general public, as well as promote the Planned Unit Development zoning applicable to the property. See *N.J.S.A. 40:55D-2a, g and k*. These constitute additional reasons for finding that the positive criteria for the granting of a *d(1)* use variance has been satisfied and that the site is particularly suitable for the proposed use. **Medici v. BRP Co.**, supra, 107 N.J. at 4.

8. The Board concludes that the use variance may be granted without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance. The use will create no detriment to the shopping complex and surrounding area. Testimony indicated that Building E is appropriate for the medical use and that there is adequate parking within this area to serve the facility. As noted above, the use promotes Goals and Objectives of the MLUL, and the shopping complex has, in addition to adequate parking, the necessary infrastructure to accommodate the use without creating any negative

conditions, either to the complex itself or nearby properties. For these reasons, the Board finds that the negative criteria for the granting of the use variance has been satisfied.

9. The Board finds that the variances relating to signage for the City MD use may be granted pursuant to *N.J.S.A. 40:55D-70c(2)*. The Board accepts the testimony of Mr. Preiss that the Goals and Objectives of the MLUL supportive of the *d(1)* use variance are equally applicable to the signage relief. The front sign at 40.64 square feet exceeds the thirty-six (36) square foot requirement, and the aggregate area of 70.53 square feet for the two (2) signs exceeds the sixty (60) square foot maximum permitted signage area. This deviation relief is not significant, and may be further justified in that many persons accessing the medical facility, in the words of Dr. Shami, may be experiencing medical episodes and need to find the medical use quickly. Permitting a slightly large sign area may assist patients in such a situation. The slightly larger sign area will permit the use to be readily identified and will promote safety. The minimal deviation relief will create no adverse conditions to the shopping complex or the surrounding area, nor substantially impair the Zone Plan or Zoning Ordinance. Accordingly, the Board finds that the positive and negative criteria for the granting of the variance relief pertaining to the City MD use has been satisfied.

10. The Board finds that the additional third signs for Chase and Lululemon may be justified under *N.J.S.A. 40:55D-70c(2)* and that the benefits thereof will outweigh any detriment. Granting of relief for the additional sign



and additional signage area will also promote the goal of public safety in the MLUL. See *N.J.S.A. 40:55D-2a*. Approval will also advance the Planned Unit Development character of the shopping complex. See *N.J.S.A. 40:55D-2k*. The deviation relief will create no adverse conditions to the shopping complex, and the proposed signs are similar to those maintained by other tenants. The variance relief for the signage is minimal, particularly when the size and scale of the shopping complex is considered. Accordingly, the variance relief for signage pertaining to Chase and Lululemon may be granted.

11. The Board also determines that a use permit may be granted to City MD in view of the approval of the *d(1)* use variance. The Board finds that the application for a use permit meets the applicable requirements subject to the conditions hereinafter set forth.

**BE IT FURTHER RESOLVED** by the Planning Board of the Borough of Montvale, that based upon the above findings of fact and conclusions that a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* and variance pertaining to signage pursuant to *N.J.S.A. 40:55D-70c* be and are hereby granted to the applicant so as to permit use of the entirety of Building E as a medical office, and for ancillary signs in connection with such use, as well as for signage for Chase Bank and Lululemon, and a use permit is granted to City MD, subject to the following conditions:

1. Submission of the required Police Department information sheet and employee zip codes prior to issuance of a Certificate of Occupancy.

2. Signage shall be as represented during the hearing, with the size and colors thereof as depicted on the Signage Plans consistent with the variances herein approved.

3. Adherence to all representations made by the applicant, its witness during the hearing, as well as any written submission, including exhibits, which representations are hereby made conditions of the within approval.

4. Approval by any and all agencies having jurisdiction. Should the action of any such agency modify or affect the within approval, the applicant shall be required to return to the Board for further consideration and approval of any modification caused by the action of such other jurisdiction.

5. Certification that all taxes and assessments have been paid to the present time.

6. The applicant shall conform with all requirements of the Construction Official, Borough Engineer, Police Department, Fire Department, and any other official having jurisdiction with respect to the use of the subject premises.

7. Approval by the Building Department of all necessary permits, including the issuance of a Certificate of Occupancy.

8. Payment of all fees and deposits as established by Ordinance which shall be used to reimburse the Borough for review of the within application, preparation of this resolution, and inspection of the work to be performed hereunder.

**BE IT FURTHER RESOLVED** that the Secretary of the Planning Board of the Borough of Montvale is hereby directed to mail a copy of this resolution to the applicant and to file a copy thereof with the Borough Clerk and to cause a notice of this determination of the Planning Board to be forwarded to an official newspaper of the Municipality within ten (10) days of the date hereof and thereafter to be published accordingly.

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**JOHN DE PINTO, Chairman**

**Dated: June 2, 2020**

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, June 2, 2020.

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**R. LORRAINE HUTTER, Secretary/Land  
Use Administrator**