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May 8, 2020

PLANNING REPORT

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

Re: CityMD/ Lululemon Athletica/ Chase Bank
Shoppes at DePiero Farms
60 Farm View
Block 2802, Lot 2, Qualifier C001A
Review Letter #2
MC Project No. MPP-141

Dear Board Members:

CityMD has submitted a Use Permit Application to use and occupy 5,106 square feet of “Building E”. Additionally, Montvale Development Associates, LLC has submitted a Zoning Variance Application for a use variance and signage variances. On May 5, 2020, the Applicant submitted additional signage details to amend the Application to include signage for the existing Lululemon Athletica tenant (“Building C”) and Chase Bank tenant (“Building D”). The Application requires D(1) use variances and multiple “C” variances, which are detailed in Section B.

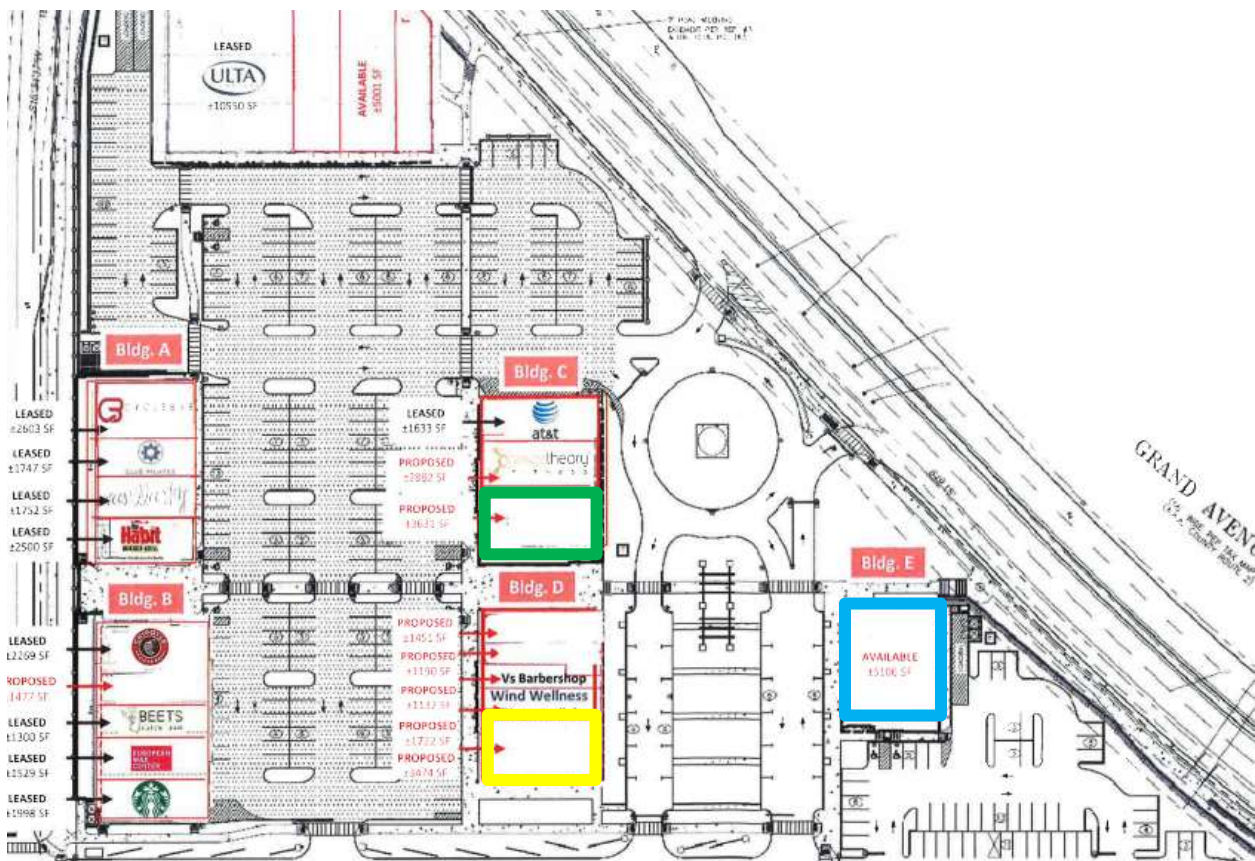
The following documents, which were submitted in support of the Application, have been reviewed:

1. Plans entitled “Signage Submittal Packet The Shoppes at DePiero Farm CityMD”, prepared by Signal Sign Co., dated November 19, 2019, revised through February 4, 2020, consisting of 5 sheets.
2. Plans entitled “The Shoppes at DePiero Farm Building C Rear Tenant Signage (46 Farm View)”, prepared by Serious Work, LLC, dated January 31, 2020, revised through February 12, 2020, consisting of 3 sheets.
3. Plans entitled “The Shoppes at DePiero Farm Building D Rear Tenant Signage (58 Farm View)”, prepared by Serious Work, LLC, dated March 4, 2020, consisting of 3 sheets.
4. Planning Board Use Permit Application, no date.
5. Planning Board Zoning Variance Application, dated February 12, 2020.

6. Montvale Police Department Business File Form, dated February 10, 2020.
7. Letter entitled "CityMD Application for Use and Signage Variances Use Permit, Amendment to Include Signage Variances for Lululemon, Athletica and Chase", prepared by Antimo A. Del Vecchio, Esq. of Beattie Padovano, LLC, dated May 5, 2020, consisting of 2 pages.
8. Resolution entitled "Resolution Granting a Use Permit and Approval of Signage to Lululemon Athletica for Premises Designated as Block 2802, Lot 2 (C001A)", memorialized February 4, 2020.

A. Existing Zoning and Surrounding Land Use

The Shoppes at DePiero Farms lifestyle center is located in the AH-PUD Affordable Housing – Planned Unit Development District. The property is surrounded by the Valley View townhome development to the northeast, office buildings to the east, the municipal building to the south, and the mixed-use development under construction at 1-3 Mercedes Drive to the east. The Applicant proposes to occupy the entirety of "Building E" as City MD. Additionally, signage is proposed at the rear of "Building C" for the existing Lululemon Athletica and at the rear of "Building D" for the existing Chase Bank. See the image below, which illustrates the proposed location of CityMD in blue, the existing (approximate) Lululemon Athletica in green, and the existing Chase Bank in yellow within the greater lifestyle center.





B. Variances

The Application for CityMD requires the following “D” variances:

1. Section 128-5.14C.(2) – D(1) variance for use. The AH-PUD District does not permit medical office/clinic.

The Applicant proposes a medical office/clinic.

2. Section 128-5.14E(1) – D(1) variance for use. The Ordinance states “any use not specifically permitted shall be prohibited”.

The Applicant proposes a use, which is not specifically listed in the principal permitted uses section of the Ordinance (§128-5.14C(2)). Note that we believe this variance is subsumed by #1 above.

Additionally, the Application requires the following “C” variances.

CityMD

1. Section 128-5.14D.(2) – Variance for signage compliance. The Ordinance permits signs in accordance with Section 128-8.20.1C.(13).

The Applicant proposes signage, which does not comply with the signage requirements of 128-8.20.1C.(13).

2. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for number of signs. The Ordinance permits two wall signs per tenant for stores less than 20,000 square feet.

The Applicant proposes a total of three wall signs for CityMD, one sign on the east (rear), south (side), and west (front) façades.

3. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for total sign area. The Ordinance limits the total sign area to 60 square feet for stores less than 20,000 square feet.

According to Sheet 2 of the Sign Plans, the Applicant proposes the front wall sign to be 30 square feet, the side wall sign to be 22 square feet, and the rear wall sign to be 30 square feet. This totals 82 square feet. However, when this office calculates the area based on the plan dimensions, our product is different than the Applicant. We calculate that the front wall sign is 40.64 square feet, the side wall sign is 14.34 square feet, and the rear wall sign is 30.10 square feet. This totals 85.08 square feet.

4. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for individual sign area. The Ordinance limits the sign area of any one sign to 36 square feet for stores less than 20,000 square feet.

The Applicant proposes a 40.64 square foot sign on the front façade.



Lululemon Athletica

1. Section 128-5.14D.(2) – Variance for signage compliance. The Ordinance permits signs in accordance with Section 128-8.20.1C.(13).

The Applicant proposes signage, which does not comply with the signage requirements of 128-8.20.1C.(13).

2. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for number of signs. The Ordinance permits two wall signs per tenant for stores less than 20,000 square feet.

The Applicant proposes a third sign on the east (rear) facade of the existing Lululemon Athletica tenant space, while a front façade wall sign and pendant/blade sign were previously approved.

3. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for total sign area. The Ordinance limits the total sign area to 60 square feet for stores less than 20,000 square feet.

On February 4, 2020 the Applicant received approval to use and occupy 2,529 square feet of “Building C” and install a front wall sign and pendant/blade sign. The Approved front wall sign is 32.58 square feet and the approved pendant sign is four square feet, totaling 36.58 square feet. The Applicant now proposes a 24-square-foot rear sign, which would increase the total sign area to 60.58 square feet.

Chase Bank

1. Section 128-5.14D.(2) – Variance for signage compliance. The Ordinance permits signs in accordance with Section 128-8.20.1C.(13).

The Applicant proposes signage, which does not comply with the signage requirements of 128-8.20.1C.(13).

2. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for number of signs. The Ordinance permits two wall signs per tenant for stores less than 20,000 square feet.

The Applicant proposes a third wall sign at the east (rear) side of the existing Chase Bank tenant space, while a west (front) and south (side) façade wall sign were previously approved.

3. Section 128, Attachment 4 via 128-8.20.1C.(13)(a) – Variance for total sign area. The Ordinance limits the total sign area to 60 square feet for stores less than 20,000 square feet.

The proposed wall sign on the Chase Bank rear façade is 24 square feet. On November 20, 2018, the Applicant received approval to install two wall signs, one on the west (front) façade and one on the south (side) façade. The front wall sign is 36 square feet, while the side wall sign is 20.7 square feet, which totals 56.7 square feet. The proposed rear hanging sign would increase the total sign area to 80.7 square feet.



C. Variance Proofs

“D” Variances

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.

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 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” variances

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. Waivers/Exceptions

The Application does not require any waivers/exceptions.

E. Comments

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

1. The Applicant’s professionals must provide testimony to support the grant of the variances required. Testimony must address both the negative and positive criteria requirements of the MLUL.
2. The Applicant shall provide testimony regarding the anticipated peak number of patients/clients for weekdays verses weekends for CityMD.
3. Item 5a of the CityMD Use Permit indicates seven employees will occupy the premises. Is this the total number of employees or the total number employees during the peak shift? Testimony shall be provided.
4. The Code Calculations table on Sheet 2 of the CityMD Sign Plans indicates the area of the front wall sign is 30 square feet. However, the dimensions provided on Sheet 2 calculates to 40.64 square feet. The Applicant shall note that Section 128-9.7A.3A states:

Computation of area of individual signs. The area of a sign face shall be computed by drawing a square or rectangle that encompasses the extreme limits of the writing, representation, emblem or other display, together with the sign frame and any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed; or by delineating the area established by reason of distinctive variation in background color or by borders, whichever is greater.

Therefore, the area of the front wall sign is calculated by the greater height of the signs, 22 inches, by the total length of the sign, 11 feet, 8 inches plus 10 feet, six inches. The Applicant shall revise the Code Calculations table.

5. The Code Calculations table indicates the area of CityMD’s side sign is 22 square feet. However, the dimensions provided on Sheet 4 of the Sign Plan calculates to 14.34 square feet. This discrepancy shall be eliminated.
6. The CityMD front wall sign is currently 40.64 square feet. The Applicant is urged to reduce this to 36 square feet to eliminate one of the bulk variances.



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)
Andy Hipolit, Borough Engineer (via email AHipolit@maserconsulting.com)
John DePinto, Board Chair (via email jdepinto@montvaleboro.org)
Bob Regan, Board Attorney (via email rtregan@rtreganlaw.com)

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