

<u>REGULAR MEETING OF THE MONTVALE PLANNING BOARD</u>
<u>Agenda</u>
<u>Tuesday, June 2, 2020</u>
<u>Virtual Meeting by Zoom</u>
Please note: A curfew of 11:15 PM is strictly adhered to by the Board. No new matter involving an applicant will be started after 10:30 PM. At 10PM the Chairman will make a determination and advise applicants whether they will be heard. If an applicant cannot be heard because of the lateness of the hour, the matter will be carried over to the next regularly scheduled meeting.

PLEASE TAKE NOTICE that due to the current New Jersey State of Emergency and Public Health Emergency declared by Governor Phil Murphy, and in an effort to prevent further spread of COVID-19 and to protect the health and safety of residents, Borough staff, professionals, and applicants, the Municipal Building remains closed. In accordance with the Open Public Meeting Act, N.J.S.A. 10:4-6, et seq., and/or P.L. 2020, c.11, and/or the "Operational Guidance – COVID-19: Guidance for Remote Public Meetings in New Jersey" dated March 23, 2020, and "Operational Guidance – COVID-19: N.J.S.A. 40:55D-1, Recommendation for Land Use Public Meetings in New Jersey" dated April 2, 2020, both published by the New Jersey Department of Community Affairs, Division of Local Governmental Services. During this time, the Montvale Planning Board will meet using Zoom. The public is welcome **to log in using the number shown** in the information.

Topic: Montvale Planning Board Meeting

Time: June 2, 2020 07:30 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/3681334477?pwd=aHNWYUlidU1GclQ4dWx0VUpSUzBHZZ09>

Meeting ID: 368 133 4477

Password: 908106

One tap mobile

+19294362866,,3681334477#,,1#,908106# US (New York)

+13017158592,,3681334477#,,1#,908106# US (Germantown)

Dial by your location

+1 929 436 2866 US (New York)

Meeting ID: 368 133 4477

Password: 908106

ROLL CALL:

MISC.MATTERS RAISED BY BOARD MEMBERS/BOARD ATTORNEY/BOROUGH ENGINEER:

ZONING REPORT:

ENVIRONMENTAL COMMISSION LIAISON REPORT:

SITE PLAN COMMITTEE REPORT:

CORRESPONDENCE: placed on the website

APPROVAL OF MINUTES: February 4, 2020

DISCUSSION:
Zoning Map

USE PERMITS:

none

PUBLIC HEARINGS (NEW):

1. Block 1601, Lot 7- Borough of Montvale-26 N. Kinderkamack Road-Use Variance-

PUBLIC HEARINGS (CONT):

1. Block 1601 Lot 15-Atlantis Management Group, LLC-12 Railroad Avenue-
Application for Site Plan and Variance Approval
Carried and new notice will be given at a later date.
2. Block 1002 Lot 7- Waypoint Residential Services, LLC -127 Summit Avenue -Application
for Preliminary and Final Site Plan and Bulk Variance Approval and Soil Movement-carried
to a later date new notice will be given
3. Block 3201 Lot 4-Ridgecrest Realty Associates, Inc.-21 Philips Parkway
Application for Conditional Use and Variance Approval, Major Soil Moving Permit Approval, Bulk
Variance Approval, EIS Approval and Site Plan -carried to June 16th, 2020 new notice is being given

RESOLUTIONS:

1. A Resolution granting a Use Permit, Use Variances D(1) and C, and Approval of Signage to
Block 2802 Lot 2, Qualifier C001A- CityMD-Shoppes at DePiero Farms-60 Farm View

Other Business
Open Meeting to the Public
Adjournment

Next Regular Scheduled Meeting: June 16, 2020

REGULAR MEETING OF THE MONTVALE PLANNING BOARD

Minutes

Tuesday, February 4, 2020-7:30pm

Council Chambers, 12 Mercedes Drive, 2nd Floor, Montvale, NJ

Please note: A curfew of 11:15 PM is strictly adhered to by the Board. No new matter involving an applicant will be started after 10:30 PM. At 10PM the Chairman will make a determination and advise applicants whether they will be heard. If an applicant cannot be heard because of the lateness of the hour, the matter will be carried over to the next regularly scheduled meeting.

ROLL CALL: Present: Mr. Culhane, Mr. Fette, Mr. Lintner, Mr. Stefanelli, Mr. Zitelli and Chairman De Pinto

Absent: Ms. Cudequest, Councilmember Curry, Mr. D'Agostino, Ms. O'Neill, and Mr. Teagno

Also Present: Ms. Hutter, Land Use Administrator; Mr. Regan, Board Attorney; Mr. Hipolit, Board Engineer; Ms. Green, Board Planner

MISC.MATTERS RAISED BY BOARD MEMBERS/BOARD ATTORNEY/BOROUGH ENGINEER: no questions

ZONING REPORT: none

ENVIRONMENTAL COMMISSION LIAISON REPORT: none

SITE PLAN COMMITTEE REPORT: CORRESPONDENCE: placed on the back table

APPROVAL OF MINUTES: January 21, 2020 A motion to approve was made by Mr. Lintner and seconded by Mr. Stefanelli. A roll call vote was taken with all present voting aye.

USE PERMITS:

1. Block 3101 Lot 1-Meta Surgical Associates, LLC-6-8 Chestnut Ridge Road-(5,610 sq. ft.)-Mr. Mancinelli represented the applicant. Mr. Jason Santacangelo, represented Meta. Mr. Regan swore in the applicant. Chairman read the application into the record. Signatures were identified. It will be ambulatory surgical center. It will be pain and orthopedic surgery. A motion to approve with a requirement of submitting a letter for ambulance services was made by Mr. Stefanelli and seconded by Mr. Culhane with all present stating aye.
2. Block 1601 Lot 24- Uncle Louie's of Montvale, LLC -15 West Grand Avenue-(3,300 sq. ft.)-Aldo Nocera and Francisco A. Ortega were sworn in by Mr. Regan. Mr. William Saracino of Saracino and Saracino represented the applicant. Chairman read the application into the record. Reference to a prior Resolution was noted from April of 2013 for the previous owner in regard to seating and signage. Applicant stated he would comply with making the new sign tasteful. They will be doing pizza and Italian food for sit down and take out. A motion to approve was made by Mr.Lintner and seconded by Mr. Stefanelli with all present stating aye.
3. Block 2402 Lot 9-Sowaran Singh-d/b/a Luke Oil-1 Park Avenue-(1451 sq. ft.)-Ms. Anita Galvin of Mohesh Rajan, LLP, attorney at law represented the applicants. They will be operating as

Montvale Enterprises, Inc. d/b/a Delta. Stacking was discussed. Property maintenance was discussed. There were three violations issued and they are all now abated except for the painting of the building stated Mr. Fette. There will be one office and 2 bays. Signage was discussed and applicant understood that there would be unilluminate signs. A motion to approve was made by Mr. Lintner and seconded by Mr. Stefanelli with all present voting aye.

PUBLIC HEARINGS (NEW): none

PUBLIC HEARINGS (CONT):

1. Block 3201 Lot 4-Ridgecrest Realty Associates, Inc.-21 Philips Parkway
Application for Conditional Use and Variance Approval, Major Soil Moving Permit Approval, Bulk Variance Approval, EIS Approval and Site Plan Waiver
Carried to March 3, 2020
2. Block 1601 Lot 15-Atlantis Management Group, LLC-12 Railroad Avenue
Application for Site Plan and Variance Approval
Carried and new notice will be given at a later date.

RESOLUTIONS:

1. Block 2802 Lot 2-Resolution Granting a Use Permit and Approval of Signage to Lululemon Athletica for Premises designated as Block 2802 Lot 2 (C001A) also known as 48 Farm View-Chairman read by title only. A request for a motion to approve was made by Mr. Stefanelli and seconded by Mr. Culhane. With all eligible voters stating aye.
2. Block 711, Lot 6- Resolution Granting Variance Relief to Stuart and Bernadette Munro for Premises designated as Block 711, Lot 6 also known as 8 Phyllis Drive-Chairman read by title only. A motion to approve was made by Mr. Stefanelli and seconded by Mr. Lintner. A roll call vote was taken with all present stating aye.

Other Business- An application should not be carried for an 11 months. By laws should be changed to Transcripts copies send to all board members.

DISCUSSION: Check off List and Ordinance Revisions for Forms- Ms. Green gave an overview. A few months ago ask her to prepare revisions and enhancements to our requirements of submission.
Numbers will be added to the left of the check list.
We need to look at the EIS Statement.

Open Meeting to the Public- no one from the public present

Adjournment- a motion to adjourn was made Mr. Stefanelli and seconded by Mr. Zitelli, all in favor stating aye.

Next Regular Scheduled Meeting: February 18, 2020 AT 7:30PM

Respectively submitted:

R. Lorraine Hutter, Land Use Administrator



1. *Journal of the American Medical Association*, 1990; 263: 1039-1041.



Corporate Headquarters
331 Newcomb Springs Rd., Suite 205
P.O. Box 100, St. Albans, VT 05478
T: 802.360.1956
F: 802.360.1956
www.hammill.com/vtreg.html

SCALE	CASE	DELETED BY	CHARACTERIAN
AS 500000	UN: 70000	SE 8	MR.
N: PROJECTED			
MYBB05			

...and the fact that the *Journal of Management Studies* is a leading journal in the field of management studies, it is a great honor to be part of this journal.

Date: April 7, 2020

Montvale, New Jersey 07645

☐ or other

N/A - Municipal Corporation

Ridgefield Park, New Jersey 07660 philip@boggialaw.com (201) 641-0006

Attorney noted above

6. Montvale Tax Assessment Map description of land involved:

Block(s): 1601 Lot(s): 7
P.O. Street Address: 26 N. Kinderkamack Road
Nearest Cross Streets: Nottingham Court
Zone District: R-15
Size of Tract: front 100'/150.19' rear 100'/150.51 sides 100'/150.19'/150.51'

7. If applicant is not the record owner of the land described in number 6 above, state applicant's legal interest:

- ☒ Contract purchaser
☐ Contract tenant
☐ Attorney for record owner
☐ Other: Describe:

8. Give size of proposed building or addition:

- ☒ House Existing structure, see survey attached
☐ Garage _____
☐ Room _____
☐ Other: Describe: _____
Height of building 28' No. of Stories 2
Type of Construction ☐ Frame ☒ Brick ☐ Other _____

9. Purpose of application: (Give a detailed description of the use of the property, present and proposed:

Property is currently used as an apartment on the top floor, and a podiatrist office on the bottom floor. Podiatrist lease expires 12/31/2020. Application proposes converting building to a 2-family house to be deed-restricted and used for affordable housing purposes.

10. Check and give full description of variance(s) requested

(residents see 'Letter of Denial' from Construction Department):

- ☐ Width ☐ Depth ☐ Area ☐ Front Yard ☐ Rear Yard
☐ Side Yards ☐ Accessory Building ☐ Height of Structure
☒ Use (specify below) ☐ Other (specify below)

Application proposes conversion of property to 2-family house for affordable housing purposes. Current zoning permits single-family homes on 15,000 sq ft lots. No changes to footprint of building are proposed.

11. With respect to each variance requested, set forth in detail the requirement(s) of the zoning ordinance and the extent to which the proposed structure or use fails to comply therewith.

R-15 District only permits single-family residential structures. Two-family home for affordable housing proposed.

12. To your knowledge, has any previous application involving the subject premises been taken to the Board of Adjustment or the Planning Board?

☐ Yes ☒ No

If yes: (a) by whom filed _____ (b) date filed _____

(c) nature of application _____

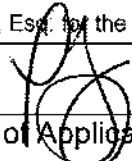
(d) result _____

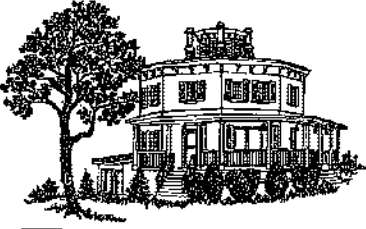
Sworn and subscribed to
Before me this 7th day
of April 2020


Notary Public of New Jersey

MARIA E TORONTO
A Notary Public of New Jersey
My Commission Expires JUNE 23, 2022

Philip N. Boggia, Esq. for the Borough of Montvale


Signature(s) of Applicant(s)



Borough of Montvale

12 Mercedes Drive, 2nd Floor
Montvale NJ 07645

www.montvale.org

Ph: 201-391-5700
Fk: 201-391-9317

CERTIFICATION OF PAYMENT OF TAXES

DATE: 4/1/20

I, Fran Scordo, Tax Collector of the Borough of Montvale, hereby

Certifies that the property taxes on the property known as

Block 1601 Lot 7, Qualifier —, as shown on the

Borough tax assessment maps, have been paid through the 1st

Quarter of 2020, and that the taxes on the aforementioned

property are not past due nor are there any penalties, assessments or

interest due or outstanding as of the above date.

Fran Scordo
Fran Scordo, Tax Collector

OWNER'S AFFIDAVIT/AUTHORIZATION - CORPORATE

STATE OF NEW JERSEY) ss:
COUNTY OF BERGEN)

William Greco of full age, being duly sworn according to law, upon his/her oath deposes and says:

1. I am (office) President of GREC co LLC
a corporation of the State of New Jersey
with its principal office at 13 Murray Road, Montvale, NJ 07645
2. I am, by virtue of my office, authorized to bid said corporation to the representations and agreements contained in this affidavit.
3. Said corporation is the owner of premises in the Borough of Montvale known as
26 North Kinderkamack Road also known as
Block 1501 Lot(s) 7 on the current official tax map.
4. Said corporation has authorized the Borough of Montvale as
☒ contract purchaser ☐ attorney ☐ tenant to make the foregoing application to the
Planning Board of the Borough of Montvale and has agreed to be bound by the decision of the
Board including all terms and conditions made a part thereof.
5. Said corporation has not authorized any other person to make such application on its behalf.

Sworn and subscribed to)
Before me on this 31 day)
Of MARCH, 2020)

Janice Gatto
A Notary Public of the State of New Jersey
JANICE GATTO
ATTORNEY AT LAW
STATE OF NEW JERSEY

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that an application has been made by

The Borough of Montvale _____ for a variance from the requirements of the zoning ordinance to the Montvale Planning Board as to property known as Block 1601, Lot(s) 7 on the current official tax assessment map of the Borough of Montvale, also known as 26 North Kinderkamack Road, Montvale, New Jersey 07645
(street address)

The purpose of the application is to request a Use Variance to permit the existing structure to be converted and used for a two-family residence for affordable housing purposes. Two-family homes are not a permitted use in the R-15 zone.

(Set forth specific relief requested; for example "to erect an open deck at the rear of the applicant's residence, thereby reducing the 30 foot required rear yard to 18 feet.)

TAKE FURTHER NOTICE that a public hearing has been ordered for Tuesday _____, 20____ at 7:30pm before the Planning Board of the Borough of Montvale, at the Municipal Building, 12 Mercedes Drive, Montvale, NJ. When this case is called, you may appear either in person or by attorney and present any opinion, which you may have with regard to the granting of the application.

The complete application is on file and is available for your inspection at the office of the Land Use Administrator at the Montvale Municipal Building on any business day between 8:30am to 4:30pm

Applicant's Name Borough of Montvale
Street Address 12 Mercedes Drive
Municipality & Zip Code Montvale, NJ 07645
Date of this Notice _____

JEFFREY FETTE
Construction Official
Zoning Official



Cynthia Petersen
Technical Assistant

201) 391-5732
Fax: (201) 391-1312

BOROUGH OF MONTVALE
Building Department - Code Enforcement
12 Mercedes Drive, Montvale, NJ 07645
www.montvale.org

ZONING LETTER OF DENIAL

DATE: 3/30/20

BLOCK: 1601 LOT: 7

ZONE: R-15

APPLICANTS NAME: Boro of Montvale

ADDRESS: 26 N. Kinderkanock RD.

Dear Applicant:

Please be advised that your permit application has been denied, as it does not conform to zoning ordinance for the Borough of Montvale, as it exists today. The following were found to be deficient:

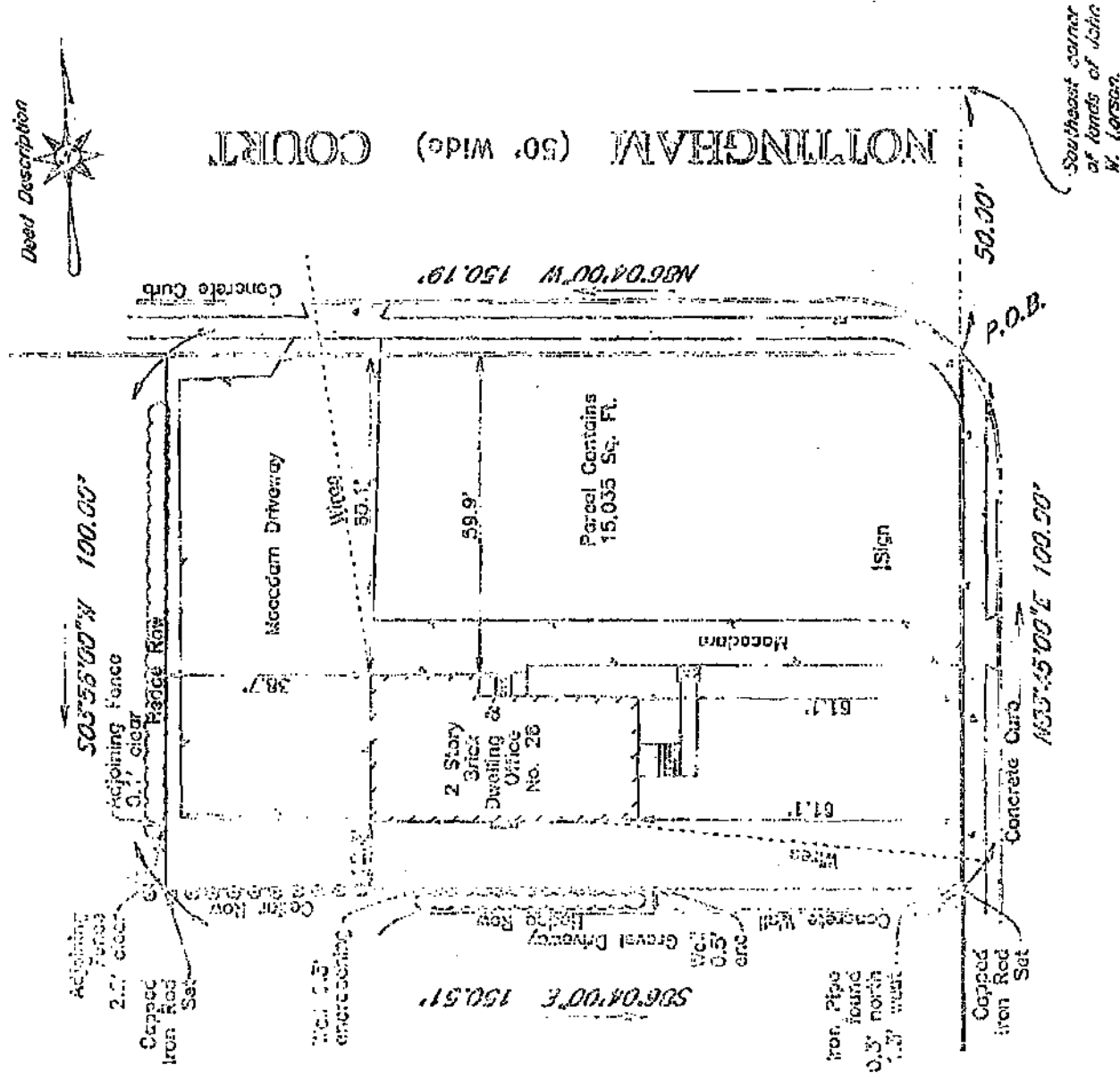
Zone: R-15
SCHEDULE OF DISTRICT REGULATIONS

Description	Code	Existing	Proposed	Variance
Minimum lot size	15,000 sq. ft.	15,035	15,035	No
Minimum lot frontage	125 ft.	100/150.19	100/150.19	No
Minimum front yard	55 ft.	84.90	84.90	No
Minimum side yard	15/40 ft.	N/A	N/A	N/A
Minimum rear yard	40 ft.	12.3	12.3	No
Maximum height - Story/Ft	2/28 ft.	2/28	2/28	No
Maximum building coverage	20%	.08% +/-	.08% +/-	No
Maximum lot coverage	35%	39% +/-	39% +/-	No
Maximum families/lot	1	1	2	Yes
Parking requirements				
Pool / Shed	N/A	N/A	N/A	N/A

If you would like to apply for a variance from the current ordinance an application must be filed. Applications may be obtained weekdays during the hours of 8:30 am and 4:30pm or online at www.montvale.org.


Jeffrey Fette
Zoning Official

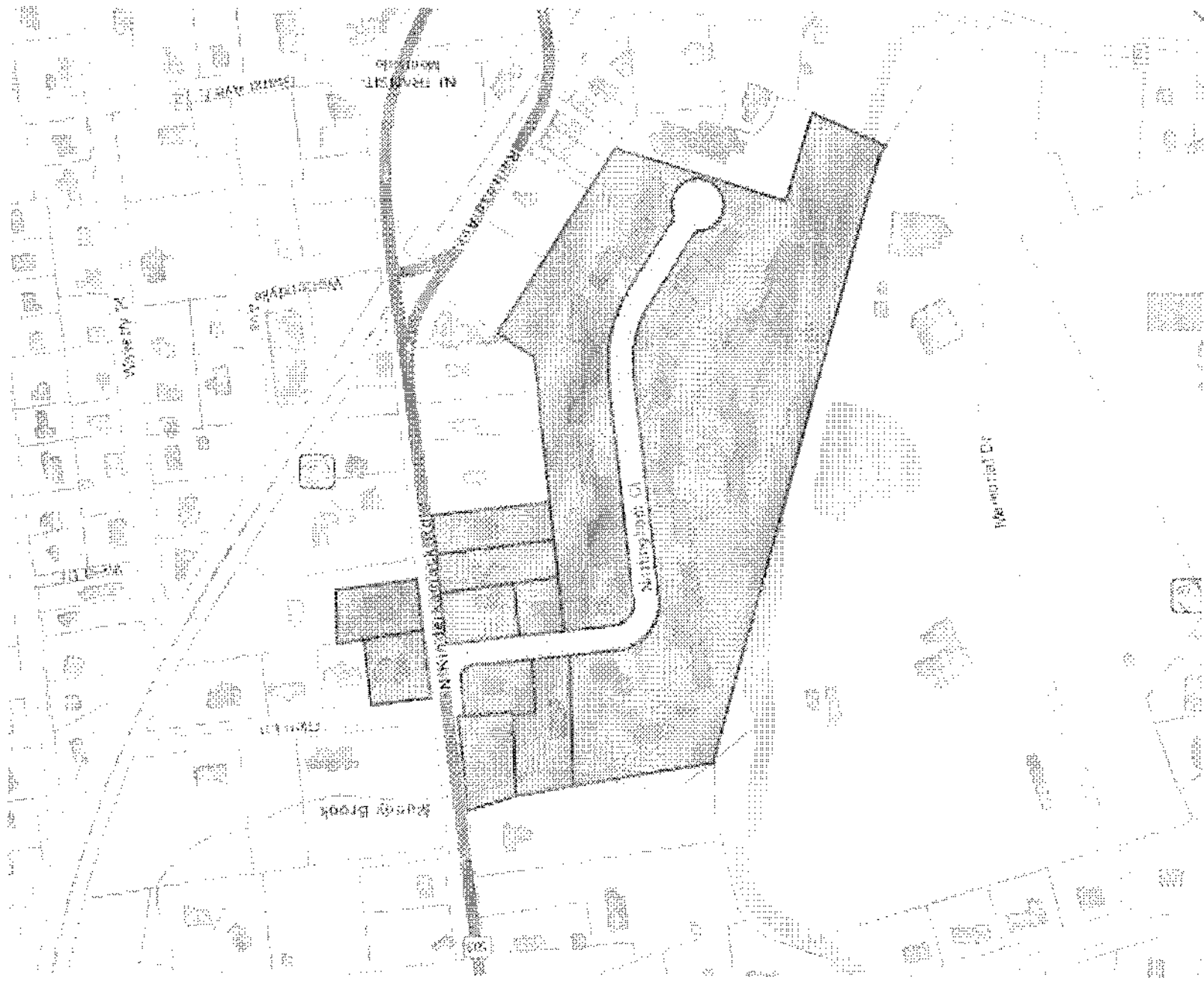
subject to any elements or restrictions that affect subject property. Boundary line determinations to be made by using property corner monuments as called only. Survey monuments not specified that property corners are to be staked. Certifications are not transferable to subsequent surveys or calculations (redundant).



CONFIDENTIAL

10-30

County of Bergen
Borough of Monticello, N.J.
Clerk: " - 20



BLOCK	LOT	STNAME	APT	TOWN	BLOCK_1	LOT_1	STREET	OWNER_NAME
1601		6 NOTTINGHAM CT		Montvale	1601		6 148 NOTTINGHAM COURT	LEE, CHOONGIL & JAE SEUNG
1603		8 GLEN LN		Montvale	1603		8 2 GLEN LANE	RADONCIC, MUZAFER & ISAK
1603		7 KINDERKAMACK RD		Montvale	1603		7 25 N KINDERKAMACK	MARELLA, FRANCIS & SUSAN
1601	3.01	NOTTINGHAM CT		Montvale	1601	3.01	149 NOTTINGHAM CT.	DEVENS, TIMOTHY & MARIA
1601		8 KINDERKAMACK RD		Montvale	1601		8 24 N KINDERKAMACK	FERNANDEZ, HUGO & BERNICE
1601		4 KINDERKAMACK RD		Montvale	1601		4 34 N KINDERKAMACK	TREANOR, ALLISON AMES
1601		7 KINDERKAMACK RD		Montvale	1601		7 26 N KINDERKAMACK	GREC CO., L.L.C.
1601		3 KINDERKAMACK RD		Montvale	1601		3 32 KINDERKAMACK RD.	SWENSON, DAVID & CHERYL
1601		9 KINDERKAMACK RD		Montvale	1601		9 22 N KINDERKAMACK	C/O RESICAP
1601		2 NOTTINGHAM MANOR		Montvale	1601		2 NOTTINGHAM MANOR	A. SANZARI ENTER.C/O J. HAMMER

OWNER_ADDR	OWNER_CITY_ST
148 NOTTINGHAM COURT	MONTVALE, NJ
2 GLEN LANE	MONTVALE, NJ
25 N KINDERKAMACK RD	MONTVALE NJ
149 NOTTINGHAM COURT	MONTVALE, NJ
24 N KINDERKAMACK ROAD	MONTVALE, NJ
5610 WISCONSIN AVE AP1206	CHEVY CHASE, MD
C/O W GRECO 13 MURRAY RD	MONTVALE, NJ
32 KINDERKAMACK RD	MONTVALE, NJ
3630 PEACHTREE RD	ATLANTA GA
25 MAIN ST COURT PLAZA N.	HACKENSACK, NJ

ESCROW AGREEMENT

THIS AGREEMENT made this 7th day of April, 2020, between _____
the Borough of Montvale _____ hereinafter referred to as
"Applicant", and the Planning Board of the Borough of Montvale, hereinafter referred to as "Board", and
the Council of the Borough of Montvale, hereinafter referred to as "Borough".

WHEREAS, the Applicant is proceeding under the Zoning Ordinance/Land Development
Ordinance for approval of a Use Variance; and

WHEREAS, the Ordinance requires the Applicant to establish an escrow whereby work
required to be performed by professionals employed by the Board will be paid for by the Applicant as
required under the provisions of the Ordinance cited above; and

WHEREAS, both parties feel that it is appropriate to reduce this understanding to written form.

WITNESSETH: IT IS mutually agreed between the parties that:

Section 1. Purposes

The Board authorizes its professional staff to review, inspect, report and study all plans, documents, statements, improvements, and provisions made by the Applicant in conforming to the requirements of the Ordinance cited and referred to above. The Board directs its professional staff to make all oral and/or written reports to the Board of its conclusions and findings derived from the review, study, and investigation and like or similar duties performed as elsewhere authorized. The Applicant agrees to pay all reasonable professional fees incurred by the Board for the performance of the duties outlined above.

Section 2. Escrow Established

Applicant, Borough, in accordance with the provisions of this agreement, hereby create an escrow to be established with the Treasurer of the Borough of Montvale and to be maintained in a banking institution or savings and loan association in this State insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits.

Section 3. Escrow Funded

Applicant by execution of this agreement shall pay to the Borough, to be deposited in the depository referred to in Section 2, such sums as are required by the Zoning Ordinance/Land Development Ordinance. The applicant shall be notified by the Borough in writing of the name and address of the institution or depository in which the deposit is made and the amount of the deposit. Execution of this agreement by the Borough acknowledges receipt of the sums referred to under this paragraph.

Section 4. Increase in Escrow Fund

If during the existence of this agreement the funds held by the Borough shall be insufficient to cover any voucher or bills submitted by the professional staff and reviewed and approved by the Board, Applicant shall within fourteen (14) days from the date of receipt of written notice deposit additional sums with the Borough to cover the amount of the deficit referred to above. During this period the professional staff shall cease all review activities. The written notice shall be sent by the Treasurer setting forth the amount of the deficit and the member or members of the professional staff to whom the additional sums are due. Unless otherwise shown, receipt shall be presumed to have occurred within three (3) days after mailing.

Section 5. Submission of Vouchers by Professional Staff

The professionals referred to in this agreement, upon the completion of their services or periodically during the performance of their services, shall submit vouchers conforming to the requirements established by the Borough for vouchers of the type and kind referred to under this paragraph. Said vouchers shall include the total of all fees and costs incurred as a result of the services set forth under Section 1 of this agreement and shall contain a brief description of the services including the Block and Lot, and name of application, which have been rendered by the professional concerning the applicant's application.

Section 6. Board Review

The Treasurer shall review all vouchers to determine whether they have been submitted in the appropriate form. If the Treasurer determines that the vouchers are in the appropriate form then the vouchers shall be submitted to the Land Use Administrator for review to determine whether the services have been performed in the manner and to a degree required by this agreement. The Treasurer shall process said vouchers in the same manner and under the same terms as are normally employed for vouchers submitted for work performed on behalf of the Borough. Following the determination by the board that services have been performed properly, the Treasurer shall mail a copy of each approved voucher to the Applicant. At the conclusion of this processing the amounts specified in said vouchers shall be deducted by the Borough from the escrow established pursuant to the agreement.

Section 7. Applicant's Objection

It is expressly agreed to by the Applicant that the right to object to the payment of any voucher is hereby expressly waived unless written notice is received by the Land Use Administrator by certified mail no later than three (3) days prior to the next regularly scheduled Board meeting following the meeting in which the contested voucher or vouchers had been approved. The writing notice shall have accompanying it a copy of each voucher being objected to. The standard of review to be utilized by the Land Use Administrator and Planning Board Chairman in determining whether the payment of any voucher is proper is whether the fees incurred are reasonable and whether the work has been performed properly. It is furthermore understood that the Applicant shall have the right to make periodic inspections of the records maintained by the Borough during normal office hours to determine the status of the escrow account.

Section 8. *Interest Allocations*

Except as otherwise set forth hereinafter all interest earned on money deposited pursuant to this agreement which shall be held in escrow shall become the property of the Borough as compensation for administrative services rendered in connection with this agreement. An Applicant shall be entitled to payment of interest whenever the Applicant shall have deposited an amount of money in excess of \$5,000.00 and the amount of interest paid on that money shall exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, that entire amount shall belong to the Applicant and shall be refunded by the Borough annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be, i.e., for professional services rendered to review applications for development, for municipal inspection fees pursuant to N.J.S.A. 40:55D-53 or to satisfy the guarantee requirements of 40:55D-53.a., however at that time the Borough shall deduct 33 1/3% of the interest for administrative and custodial expenses incurred by the Borough in fulfilling its obligations pursuant to this agreement.

Section 9. *Refund*

In the event that the escrow sums posted are more than those required, or in the event that the Applicant shall abandon the application, excess funds shall be returned to the Applicant within ONE HUNDRED AND TWENTY (120) days of the issuance of the final certificate of occupancy for the project which is the subject of the application or receipt of written notice of the abandonment of the application. Prior to the issuance of the final certificate of occupancy for any project for which Board approval has been received or upon receipt of written notice of abandonment of an application, the Treasurer shall determine from the professional staff whether there are any additional sums required to be paid from the escrow fund. In the event that there are, monies will be held by the Treasurer until notice is received by the professionals, Environmental Commission, Land Use Administrator and Construction Code Official that work has been completed.

Section 10. *Failure to Maintain Escrow Fund*

In the event that notice has been sent to the Applicant and the Applicant has failed to pay the increased amount into the escrow fund within the time period set forth in Section 4 then the Board shall cease further consideration of the application or of any other then pending application of the Applicant until the additional sum is given to the Treasurer for deposit into the escrow fund. The Applicant hereby expressly consents to a continuance of the statutorily mandated period for completion of Board review pursuant to the Municipal Land Use Law for a period of forty-five (45) days from the date of the notice from the Land Use Administrator and hereby expressly consents to an automatic rejection of Applicant's application without prejudice and without any further action by the Board if within said period the additional sum has not been given to the Treasurer.

Furthermore, in the event that notice has been sent to the Applicant and the Applicant has failed to pay the increased amount into the escrow fund within the time period set forth in Section 4 and Board review of the application has been completed, the Applicant is hereby placed on notice that the Borough

will not cause certificates of occupancy to be issued and may take such further action including, but not limited to, refusing to perform any and all further inspection, issuance of stop work orders and other relief as may be necessary, including a lien on the subject property.

Section 11. Performance Escrow – Inspections

The provisions of this agreement shall apply to the performance escrow for inspection to be paid to the Borough. The performance escrow shall be posted prior to construction of an onsite, offsite, on-tract or off-tract improvement. The amount of the escrow shall be 10% of the cost of improvements as calculated by the Board’s Engineer.

The Applicant hereby agrees that the Board Engineer will be notified in writing forty-eight (48) hours prior to the start of any construction. Failure of the Applicant to provide such notice may result in additional inspection costs.

Section 12. Addresses to which Notices are to be Sent

All notices required by this agreement in writing shall be sent to the following addresses:

Borough of Montvale
Treasurer and Land Use
Administrator
12 Mercedes Drive
Montvale, NJ 07645
201-391-5700

Address of Applicant:

Borough of Montvale		
NAME		
12 Mercedes Drive		
ADDRESS		
Montvale	NJ	07645
MUNICIPALITY	STATE	ZIP CODE
201-391-5700		
TELEPHONE NUMBER		

above.



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

Shelbourne at Hunterdon
53 Frontage Road, Suite 110
Hampton, NJ 08827
T: 908.238.0900
F: 908.238.0901
www.maserconsulting.com

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

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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.¹



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 feet²
- 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

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

² 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.³
2. Section 128-6.3 – The Ordinance limits the lot coverage to 35%. The existing property has a lot coverage of approximately 39%.⁴

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

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

⁴ 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 black 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)
John DePinto, Board Chair (via email jdepinto@montvaleboro.org)
Andrew Hipolit, Board Engineer (via email ahipolit@maserconsulting.com)
Bob Regan, Board Attorney (via email rregan@rtreganlaw.com)

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