

REGULAR MEETING OF THE MONTVALE PLANNING BOARD

Minutes

Tuesday, October 6, 2020

Council Chambers, 12 Mercedes Drive, 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. **HTTPS listed below are the documents for each application that you can view on line.**

Chairman DePinto opened the meeting at 7:35pm

ROLL CALL: Mr. Culhane, Ms. Cudequest, Mr. Fette, Mayor Ghassali, Mr. Lintner, Mr. Stefanelli, Mr. Teagno, Mr. Zitelli, Mr. Huseynov, Ms. O'Neill, Chairman De Pinto

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

Absent: Councilwoman Curry

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

ZONING REPORT:

ENVIRONMENTAL COMMISSION LIAISON REPORT: Meeting on September 21, 2020 to discuss the trail around Huff Pond. They will be placing the fence up. They are still recycling bags.

SITE PLAN COMMITTEE REPORT: none

CORRESPONDENCE: placed on the back table

APPROVAL OF MINUTES: none at this time

DISCUSSION:

USE PERMITS:

1. Block 1901 Lot 5- Louis J. Septimus & Co.-180 Summit Avenue-(1800 sq. ft.)-Mr. Regan swore in Mr. Eli Mendlowitz. Mr. Bruce Whitaker represented the applicant. Chairman read the application into the record. Mr. Mendlowitz gave a brief summary. It is a small business accounting firm. A motion to approve was made by Mr. Lintner and seconded by Mr. Culhane with all present stating aye.

2. Block 1001 Lot 2-FiveBridge CPA's & Advisors, LLC-155 Chestnut Ridge Road-(6210 sq. ft.)-Mr. Elias came forward representing the applicant with Mr. Brennen. Chairman read the application into the record. It is a public accounting firm with 12 employees. Very little client interaction in person stated Mr. Elias. A motion to approve was made by Mr. Stefanelli and seconded by Ms. O'Neill with all stating aye.

3. Block 2602 Lot 1-TSR Consulting Services, Inc.-210 Summit Avenue-(660 sq. ft.) Mr.

Gerald Salerno came forward representing Thomas Salerno. Chairman read the application into the record. They are an IT firm. They work out in the field. This will be a satellite office. He will spend two or three days a week in the office. A motion to approve was made by Mr. Culhane and seconded by Mr. Teagno with all stating aye.

4. Block 1001 Lot 1-Kantrowitz, Goldhamer & Graifman, PC-135 Chestnut Ridge Road (7,763

sq.ft.) Mr. Barry S. Kantrowitz came forward and chairman read it into the record. Question in regard to 5e. marked spaces. A motion to approve was made by Mr. Stefanelli and seconded by Mr. Culhane with all stating aye.

PUBLIC HEARINGS (CONT):

Block 1002 Lots 3 and 5-Montvale Family Apartments, LLC- 159-161 Summit Avenue-

Preliminary Site Plan Review and Variance Application- Testimony in support of the application was provided by John McDonough, a licensed professional planner who was qualified in this field. Mr. McDonough gave testimony in regard to the hand out. The bulk variances are justified under C2. In addition, at this time Adam Westenberger, a licensed professional engineer from Dynamic Engineering was also sworn.

Commencing his testimony, Mr. McDonough marked into evidence as Exhibit A-6 an exhibit of photographs consisting of seven (7) pages which depict a development of the Walters Group, the applicant's parent company in Ocean County, the design of which Mr. McDonough indicated would be similar to that which is proposed for the subject property. Twenty-five (25) units are proposed, less than the thirty-two (32) required by Ordinance which provides that the site will be developed with not fewer than thirty-two (32) affordable units. As a result of the language in the Ordinance, which Mr. McDonough described as "mandatory", a *d(1)* use variance is required. He noted that the property is specifically earmarked for an entirely affordable housing development, and that the HE/FSP and the AH-PUD District designate the property for an entirely affordable development, as does the Borough's Settlement Agreement with FSHC which has been approved by the Superior Court. While the proposal for twenty-five (25) units is less than the thirty-two (32) units referenced in the Ordinance, Housing Plan and Settlement Agreement, Mr. McDonough stated that the Borough has obtained assurances from FSHC which approved the reduction from a thirty-two (32) unit senior development to twenty-five (25) family rental apartments. The proposal is for an entirely affordable development which constitutes an inherently beneficial use which satisfies the positive criteria for the granting of a *d(1)* use variance. The twenty-five (25) units would be eligible for DCA funding, which is the basis for reducing the number of units and which also results in a less intensive development on the property.

Addressing the "*c*" variances, Mr. McDonough stated that all are necessary for the development of the project, and he believes that same may be justified as a better zoning alternative pursuant to *N.J.S.A. 40:55D-70c(2)*. He described the proposal as "a well-balanced plan", meeting the parking requirements under RSIS, as well as the majority of bulk standards applicable to the Zone. He

also referenced the setback variances and stated that same may be justified in view of the substantial landscaping, with evergreens proposed having a height of six (6) to seven (7) feet on planting and which would constitute “a solid green wall” mitigating any impact on the single-family property on Lot 2 to the west of the site and the Summit Ridge inclusionary development to the east. He discussed the concept of moving the ten (10) unit building located on the easterly side of the property in a northwesterly direction closer to the Garden State Parkway, which he stated would be less desirable and would result in substantial loss of trees and other vegetation in this area. Maintaining the building on the easterly side of the property will buffer the parking area, which he believes is preferable for residents in Summit Ridge. He also noted that moving the building to the northwest would be cost generative, resulting in additional expenses for the extension of utilities in addition to the loss of trees in this area. He described the design waivers as essentially involving architectural features, which may be granted without causing any detriment.

Borough Engineer Hipolit advised the Board that he participated in a virtual meeting with the applicant and its engineer and discussed the need for additional drainage measures pertaining to the portion of the property adjoining Lot 4 to the east. Additional drainage and landscaping in this area will be required to be addressed by the applicant at the time final site plan approval is sought. In addition, enhanced landscaping will be required, not only adjoining Lot 4, but adjoining the Summit Ridge property (Lot 6). The cul-de-sac will also be required to be eliminated to reduce the paved area and turnaround provided, subject to the Fire Department approval.

Marked into evidence as Board Exhibit 2 was a report of Borough Planner Darlene A. Green dated August 13, 2020. She noted the need for a *d(1)* use variance in view of the fact that only twenty-five (25) units are proposed, with the Ordinance mandating thirty-two (32). She also referenced the variances, particularly as to setbacks, noting that the Ordinance governing the property was crafted solely for a single building on the property, which is no longer the case. She stated that most of the Comments in her report have been addressed, and that the reduction seven (7) affordable units is not critical in that the Borough has a surplus of units in its Plan. She also discussed the issue of Deed restrictions pertaining to the units and that the units must be Deed restricted as affordable for at least thirty (30) years and that the requirements in paragraph 31 of her report will apply unless the DCA requires a modification as a condition of funding the development.

Marked into evidence as Board Exhibit 3 was a report of the Board’s Landscape Architect Gustave DeBlasio of Maser Consulting dated August 27, 2020, and the applicant agreed to comply with the requirements of this correspondence. Marked into evidence as Board Exhibit 4 was a report of the Fire Department dated August 18, 2020, with the applicant agreeing to these requirements. The applicant also agreed that the Police Department, whose report of August 11, 2020 was marked into evidence as Board Exhibit 5, would have the ability to enforce *Title 39* on the premises. The applicant did not agree to the Police Department recommendation for additional parking spaces since the plan as presented is RSIS compliant.

A number of other issues were discussed including Exhibit A-3, the architectural plans for the development, which had previously been marked into evidence at the initial public hearing held on September 1, 2020. It was also noted that the stormwater improvements proposed will meet or exceed applicable requirements. A survey of Lot 2 to the west was marked into evidence as Board Exhibit 6, which is intended to address the issue of ownership of a fence near the border of the property adjoining Lot 2 to the west. The applicant agreed that if the fence is located on the property which it would acquire, same will be removed. Mr. Hipolit again confirmed that the site will meet applicable stormwater regulations, and that additional drainage will be provided adjoining the Organ property (Lot 4) and the Summit Ridge property (Lot 6) adjoining the subject premises.

The Planning Board of the Borough of Montvale has based upon the above findings of fact, that the following conclusions are made and determined:

The Planning Board has considered the applicant's proposal which seeks preliminary site plan approval, a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* and other variance relief pursuant to *N.J.S.A. 40:55D-70c* in connection with a proposal to consolidate two (2) tax lots into a single parcel which would be developed with a total of twenty-five (25) low and moderate income units. As is noted above, the property is owned by the Borough and is designated in the HE/FSP for development for a total of thirty-two (32) senior affordable units. Pursuant to the Borough's Agreement with the applicant (Exhibit A-1), the property would be developed with an entirely affordable rental housing complex consisting of twenty-five (25) units.

The property is located in the AH-PUD District which requires that the site be developed with thirty-two (32) low and moderate income units. Since the applicant proposes to construct only twenty-five (25) units pursuant to the Agreement, a use variance is required pursuant to *N.J.S.A. 40:55D-70d(1)* in addition to other variances (see ¶4 at pp. 3-5, *supra*).

In its consideration of the *d(1)* use variance component of the application, the Board recognizes that affordable housing has been deemed by the courts of this State to be an inherently beneficial use. The fact that the proposal is for an entirely affordable housing development on a property designated for such use in both the HE/FSP and the AH-PUD District, and that the use itself promotes the general welfare, clearly satisfies the positive criteria for the granting of a *d(1)* use variance.

The thirty-two (32) affordable senior housing units originally designated for the property was as a result of the Settlement Agreement between the Borough and FSHC and which was subsequently included in the HE/FSP and the AH-PUD Ordinance. The allocation of thirty-two (32) units is also referenced in the Final Order of Judgment of Compliance and Repose in the Declaratory Judgment action filed by the Borough, "In the Matter of the Application of the Borough of Montvale", Docket No. BER-L-6141-15 which approved the HE/FSP and the Settlement Agreement with FSHC. Instead of thirty-two (32) senior affordable units, the application proposes twenty-five (25) family low and moderate income rental units. The Board accepts the testimony provided by the applicant that the funding source through the DCA is limited to a maximum of twenty-five (25) units and that the development be open to families. It has also been represented to the Board that FSHC has agreed to modify the Settlement Agreement to allow for a reduction of seven (7) units on the site, and that the Borough will not have to address this shortfall in number of units.

Approval of the *d(1)* use variance may also be based on the fact that the special reasons for the positive criteria is further satisfied in that the proposal will advance various Goals and Objectives of the Municipal Land Use Law ("MLUL"). As noted above, the application will promote the Goal of an appropriate use of land consistent with the general welfare. An entirely affordable development consisting of twenty-five (25) units will clearly promote the general welfare. As has been noted, the Settlement Agreement and the Borough's Housing Plan approved by the Superior Court designates thirty-two (32) units for the property, which is allocated to the Borough's Prior Round obligation. Amendments to the foregoing will reduce this allocation from thirty-two (32) senior units to twenty-five (25) affordable family rental units. In addition, the MLUL Goal of providing sufficient space for a variety of uses will be advanced in that the property has been designated for an entirely affordable development in the HE/FSP. The objective in the MLUL of appropriate population densities will also be realized, in that a development of twenty-five (25) units on 3.10 acres is consistent with the density of multiple family development in close proximity to the subject premises. In addition, a Goal and Objective of the Master Plan, diversifying the housing stock (Goal 14), would also be advanced by the granting of the *d(1)* use variance to permit the entirely affordable

development of twenty-five (25) units. The fact that the use is inherently beneficial, will be consistent with the Settlement Agreement and HE/FSP to be amended, and will promote Goals and Objectives of the MLUL and Master Plan provide substantial reasons for finding that special reasons exist to support the granting of the *d(1)* use variance.

The above findings pertaining to the positive criteria for a *d(1)* use variance are equally applicable to the implicated variance relief pursuant to *N.J.S.A. 40:55D-70c* and necessary waivers referenced in paragraph 4 at pp. 3-5 above. A land use board, in considering an application for a use variance, must consider the overall site design, such that the “*c*” variances are subsumed in the request for a *d(1)* use variance. As the Board found with respect to the *d(1)* use variance, purposes of the MLUL will be advanced by granting this relief, and accordingly these variances may be granted pursuant to *N.J.S.A. 40:55D-70c(2)*, with the benefits of granting such relief substantially outweighing any detriment. As noted above, the proposal will also advance the Borough’s Housing Plan, as well as the Master Plan. Accordingly, the Board finds the variance relief pursuant to *N.J.S.A. 40:55D-70c* may be approved.

The *d(1)* and *c* variances may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance. There are a number of reasons supportive of this conclusion. Although the site has been designated for a development of thirty-two (32) units in the HE/FSP and Settlement Agreement with FSHC, both of which have been approved by the Superior Court, the application proposes a less dense development of twenty-five (25) units, which the Board believes is beneficial to both the site and the surrounding neighborhood. The proposed nonconforming setbacks pertaining to the properties to the east and west will be buffered by substantial landscaping. The proposal will comply with the majority of bulk standards applicable to the AH-PUD District. Particularly significant is that lot coverage at 36.1% is significantly below the maximum of fifty (50%) percent permitted in the Zone. Building coverage at 11.8% is also less than the fifteen (15%) percent maximum. Minimum open space at 63.9% is greater than the fifty (50%) percent minimum required. Floor area ratio (“FAR”) proposed at 0.23 is less than the maximum of .30. Drainage improvements are proposed which will exceed standards pertaining to post-development runoff rates, when compared to existing conditions. The Board believes that these factors require a determination that the *d(1)* and *c* variances may be granted without being inimical to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance.

The Board is of the opinion that the applicant has satisfied the criteria for preliminary site plan approval. Issues such as drainage, parking, circulation and vehicular access, lighting, and landscaping have been reviewed and determined by the Board to be compliant with applicable standards. The landscaping and drainage components of the application will be further supplemented within the area of the easterly boundary of the property adjoining Lots 4 and 6. The plans as presented provide the requisite information as set forth in §128-8.7D and 8.9D, as well as the performance standards in §128-8.11. Based upon the foregoing, preliminary site plan approval may be granted.

The following conditions will be made part of the resolution:

1. Issuance of final site plan approval pursuant to *N.J.S.A. 40:55D-50*.
2. Compliance by the applicant with the Development and Property Transfer Agreement entered into with the Borough dated June 18, 2020 (Exhibit A-1).
3. Issuance of Treatment Works Approval (“TWA”) by the DEP.
4. During snowfall periods, snow shall not be stored along the property’s boundary with Lots 4 and 6.

5. The proposed light fixtures shall have shields so as to prevent glare and spillage onto neighboring properties.

6. The submission for final site plan approval shall include additional drainage and landscaping within the easterly portions of the property adjoining Lots 4 and 6. In addition, the cul-de-sac design shall be eliminated and an alternate design with a turnaround provided, subject to the approval of the Board and Fire Department.

7. Compliance with the conditions detailed in the reports of Borough Engineer Andrew R. Hipolit dated August 12, 2020 (Board Exhibit 1), Borough Planner Darlene A. Green dated August 13, 2020 (Board Exhibit 2), and Borough Landscape Architect Gustave DeBlasio dated August 27, 2020 (Board Exhibit 3), together with any future letter requirements.

8. Submission of consent to the enforcement of *Title 39* and Borough Ordinances, as requested by the Police Department.

9. Adherence to all representations made by the applicant and its representatives and professionals during the course of the public hearings, which representations are made conditions of the within approval.

10. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the applicant. Any deviation from such submissions shall require the applicant to return to the Board for further review and any necessary approvals.

11. Approval by the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, Department of the Army, New York District Corps. of Engineers, and such other federal, state, county and municipal agencies having jurisdiction over the proposed use. In the event any approval by any other agency results in an alteration or modification of the application as approved by the Planning Board, the applicant shall be required to resubmit the application.

12. Compliance with all present letter requirements of the Board engineer. In addition, the applicant shall comply with the updated landscaping plan provided to and approved by the Board Engineer.

13. The applicant shall be required to comply with the design and site details as shown on all plans submitted through their respective dates. Any deviation from any such development designs or details shall require further review and approval by the Board.

A motion to open up to board members was made by Mr. Lintner and seconded by Mr. Culhane.

A motion to open to the public was made by Ms. O'Neill and seconded by Mr. Culhane.

Laurenana Organ 157 Summit Avenue. Why can't they move the building further back. Why do these units not have garages? Applicant discussed the moving of the building and why no garages.

A motion to close was made by Mr. Stefanelli and seconded by Ms. O'Neill. Chairman stated the board would take a five-minute break.

Meeting opened to the public. A motion to open was made by Ms. Cudequest, and seconded by Ms. O'Neill. Mr. Kurshan stated he would like an adjournment. Ms. Organ stated that she is disappointed that the community in a segregation in the town of Montvale. She wasn't pleased that the applicant spoke with rudeness.

David Rodriguez came forward and was sworn in. He said he understands the need to the property. Their main concern is the privacy towards their property and neighboring properties. They would like to remain living in the nature that they are. They are concerned with lighting spillage, and drainage. Mr. Hipolit spoke about the lighting and spillage and that if there is any issue, they will need to fix it immediately.

Mr. Kurshan came forward and was sworn in. He doesn't understand why the Borough is giving the number of monies given to the applicant. He would like to see a better plan as an alternative plan. A motion to close Mr. Zitelli and seconded by Ms. O'Neill.

Mr. Del Duca came forward. Preliminary site plan to permit 25 apartment units for families of low and moderate income. The primary concern is the building being moved.

A motion to have the board attorney prepare a resolution of approval was made by Mr. Lintner and seconded by Mr. Zitelli with all in favor stating aye.

https://drive.google.com/drive/folders/1cFD3F_NCnYBWNLhcLOHFQIFEnCHv4lrB

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- click below link for documents to view -<https://www.dropbox.com/sh/3wpdvdnuuypml6l/AADMHQKfrPI-jfJZs9Z7cOY3a?dl=0>

https://drive.google.com/drive/folders/1qNHGWalyWhFQKjckE4JzItxV_cdJbTy1?usp=sharing

See attached transcript.

PUBLIC HEARINGS (NEW):

Block 1902 Lot 3- 140 Hopper Avenue Associates, LLC- 295 W. Grand Avenue- Amended Site Plan Review and Variance Application-

https://drive.google.com/drive/folders/1nUD2C8jOirC9a_IV7ED0E-ZkwJ-mA-vr-

Ms. Holly Schepisi came forward representing the applicant. The subject property is located on the northerly side of Grand Avenue West and consists of a parcel of approximately 107,000 square feet, being somewhat irregular in shape, with frontage on both Grand Avenue and Craig Road within the OR-3 Office and Research District. More particularly, the site plan indicates approximately 463.43 feet of frontage along Grand Avenue and 354.88 feet of frontage along Craig Road. Presently, there is located on the property a single-story brick façade building with a double row of parking to the east of the building and driveway access from both streets. There is also a small paved area utilized for parking on the westerly side of the building. Neighboring uses include an electrical substation on Lot 2 of Block 1902 to the east, which has existing driveway access to the subject property to Craig Road. In addition, opposite Craig Road is the Valley View multi-family residential project, which is a 128 unit development with an affordable housing component. To the south, across Grand Avenue, is the former Mercedes-Benz corporate campus which is being redeveloped with housing, retail and corporate offices, and the retail complex known as the Shoppes At De Piero Farm. The existing single-story building contains 20,300 square feet of floor area.

By resolution dated May 6, 2008, the applicant received amended site plan approval and variance relief to convert a portion of the building comprising 16,000 square feet of floor area to a child care facility, with the remaining 4,300 square feet to continue to be devoted to office uses. The building is currently vacant.

The applicant seeks approval to permit 4,000 square feet within the building to be used as a fitness center, which is not a permitted use in the OR-3 District. Accordingly, a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* is required to sanction this use. The Site Plan drawings (Exhibit A-1) which accompanied the application indicate that the balance of the space in the building would contain a child care center comprising 12,400

square feet and office areas aggregating 3,900 square feet. Presently, access to and from the site is restricted to left turns only entering from West Grand Avenue eastbound (right turns into the property are not permitted from West Grand Avenue westbound) and right turns only exiting onto West Grand Avenue westbound. Restrictions on access from Craig Road include no left turns into the site from Craig Road northbound, and no left turn exiting the site onto Craig Road northbound. The amended application seeks to permit left turn exit and right turn ingress and removal of the no left turn egress restriction to Craig Road. In addition, the plan proposes architectural renovations to the building, the installation of a ramp, additional walkways, expanded awnings on the building, and additional signage.

As noted above, a fitness center use is proposed for 4,000 square feet within the building, which is not a permitted use and requires a *d(1)* use variance. In addition, the following variances are required pursuant to *N.J.S.A. 40:55D-70c*:

A. **Section 128-6.3** – Variance for front yard setback. The Ordinance requires a 160-foot setback from the street centerline.

The applicant proposes a canopy with an approximate front yard setback of 134 feet to the West Grand Avenue centerline. It should be noted that the existing building has a 143-foot setback to the West Grand Avenue centerline.

B. **Section 128-6.3** – Variance for side yard setback. The Ordinance requires a 65-foot side yard setback.

The applicant proposes an 18-foot setback from the northern property line to the concrete pads with awnings on the north side of the building. It should be noted that the applicant received approval for a 25-foot side yard setback to an awning in 2008.

C. **Section 128-6.3** – Variance for aggregate side yard setback. The Ordinance requires a 130-foot aggregate side yard setback.

The applicant proposes an aggregate side yard setback of 81 feet. It should be noted that the applicant received approval for an 88-foot aggregate side yard setback in 2008 due to an approved awning.

D. **Section 128-9.7A.6A.** – Variance for number of signs per lot. The Ordinance permits one sign to be erected on any parcel or lot on which there is a building, which may be freestanding or affixed to said structure for uses permitted in the zone.

The applicant proposes a total of six wall signs, three on the west side of the building, two on the south side of the building, and one on the east side of the building. Additionally, two freestanding directory signs are proposed. It should be noted that the relief was granted for two wall signs in 2008.

E. **Section 128-9.7A.9C.** – Variance for freestanding sign. The Ordinance does not permit freestanding signs except as otherwise specifically provided in the Ordinance.

The applicant proposes two freestanding signs and four freestanding, off-site signs in the West Grand Avenue right-of-way and one in the Craig Road right-of-way, which is not permitted under the Ordinance.

F. **Section 128-9.7A.9G.** – Variance for directory sign. The Ordinance does not permit directories or listing of occupants and users within a building on any freestanding sign. However, freestanding signs

for buildings with more than 55,000 square feet, being located in the OR-1, OR-2, OR-3, or SED Districts, which contain permitted uses may list the name of any tenant occupying 40% or more of the gross floor area on the freestanding sign.

The applicant proposes two freestanding signs with four tenant signs. However, the building is less than 55,000 square feet and only Tenant D occupies more than 40% of the building.

G. Section 129-9.7A.9I. – Variance for sign standards. The Ordinance prohibits signs which do not comply with the applicable requirements in other sections of this Ordinance.

The applicant proposes six wall signs, two freestanding directory signs, and four off-site signs, which do not comply with several sections of the sign code.

Additionally, the property has pre-existing non-conforming conditions.

The Board was advised that the application requires a *d(1)* use variance and certain *c* variances. Ms. Schepisi stated that Unit A in the building comprising approximately 4,000 square feet would be occupied by Spenga Fitness, which she described as a “boutique fitness center”. This use will require a *d(1)* use variance. Ms. Schepisi also stated that the applicant seeks relief from the Borough’s Sign Ordinance as applied to the OR-3 District. New signage being proposed includes two (2) monument signs, one on West Grand Avenue and one on Craig Road, and a total of six (6) wall signs, three (3) on the westerly façade facing Grand Avenue West, two (2) on the southerly elevation facing the parking lot, and one (1) on the easterly elevation facing Craig Road. Originally, a total of ten (10) signs were proposed. Ms. Schepisi stated that the proposed site modifications will be consistent with the Borough Master Plan, as well as improved public safety.

The applicant called as its first witness Chiraz Trivedi, the owner of the franchise known as Spenga Fitness. Commencing his testimony, Mr. Trivedi stated that Spenga is a boutique fitness center which combines cardio, strength and yoga into a 60 minute instructed-led class. The first 20 minutes involves a “spin class”, the second meets “strength”, and the third “wrapped-up Yoga”. The area occupied by the fitness center would be 4,000 square feet. The maximum number of clients in a class would be twenty-four (24), and the area within the building to be occupied would be on the western side of the structure. The business would have a maximum of three (3) to four (4) employees at any time.

The next witness who testified on behalf of the application was Daniel Lamothe of Lapatka Associates, a licensed professional engineer who was qualified in this field. Marked into evidence as **Exhibit A-1** was a color version of Sheet 1 of the Site Plan drawing, revised to July 15, 2020. Commencing his testimony, Mr. Lamothe described the building’s location with frontage on Grand Avenue and Craig Road, with two (2) existing driveways being a two-way driveway to Grand Avenue. He described the turning restrictions on both driveways, with a prohibition of left turns out to Craig Road, as well as prohibitions on a right turn in or left turn out to Grand Avenue. He described improvements depicted on **Exhibit A-2** as improvements that “are very minor” which include a new ADA ramp to improve access to parking areas in front of the building, as well as sidewalk extensions leading to two (2) proposed doors. Highlighted in orange on the Exhibit is the removal of restrictions on both the Craig Road and Grand Avenue driveways which would permit a right out and left out onto Craig Road, as well as a right in on Grand Avenue. A dedicated lane is proposed for the left turn out movement, as well as a dedicated lane for the right turn movement. An existing island will be removed to widen the driveway for the proposed movements. The Chairman questioned as to whether these plans have been reviewed by the County, and Mr. Lamothe replied in the affirmative. Borough Engineer Andrew R. Hipolit

stated he spoke with Eric Timsak of Bergen County, who is in agreement with these proposed changes.

The applicant's Engineer next addressed the proposed monument signs to be set back ten (10) feet off the road, one at the Grand Avenue entrance and one at the Craig Road entrance. He noted that the irregular shape of the parcel and the restriction as to sight visibility require a need for two (2) monument signs. The Engineer noted that the 2008 approval permitted a twenty-five (25) foot setback into the side yard for canopies. The proposal would reduce the setback to eighteen (18) feet. The aggregate side yard setback would be reduced from the previously approved eighty-eight (88) feet to eighty-one (81) feet, less than the 130 foot requirement.

In response to a question from the Chairman, Mr. Lamothe stated that no changes are proposed to the child recreational plan on the premises. He also noted that a canopy is proposed with a 134 foot setback to the Grand Avenue West centerline, with the existing building having a 143 foot setback, less than the 160 foot requirement. Mr. Lamothe noted that to address concerns about cut-through traffic, the applicant has proposed "no through" traffic signage, as well as two (2) speed bumps to detract people from cutting through the property. Ms. Schepisi stated that the applicant would provide consent to enforcement of *Title 39* on the premises. Mr. Lamothe stated that the revised traffic pattern for ingress and egress modifications and the removal of the island are beneficial to traffic conditions and circulation. Mr. Lamothe stated that the additional signage will improve site safety, as well as vehicular circulation, and stated that the signage has been reviewed and approved by the County.

Marked into evidence as Board Exhibit 1 was the report of Borough Engineer Andrew R. Hipolit of Maser Consulting dated August 14, 2020. Mr. Hipolit stated that the applicant has addressed issues pertaining to speed bumps, traffic, signage and other issues, with the applicant agreeing to comply with the conditions detailed in this Exhibit.

Testimony in support of the application was provided by Daniel Holdefehr, a licensed architect who was qualified in this field. Plans prepared by him revised to May 27, 2020 were marked into evidence as **Exhibit A-4**¹ (Floor Plan), as **Exhibit A-5** (Elevations), as Exhibit A-6 (Monument Sign Details), and as **Exhibit A-7** (depiction of the Spenga Fitness sign). Addressing the application, Mr. Holdefehr described the Floor Plan for the 20,300 square feet of space, noting the location for Spenga Fitness and a proposed day care facility. There previously was a child care facility on the premises until 2018. Only three (3) tenants are proposed in addition to the child care facility, one of which would be the fitness center. As a result, the number of signs has been reduced from ten (10) to six (6). The witness described the ramp and canopy area, with the expansion of the canopy needed for the day care facility and for shielding the children from other activities in the area. He described the upgrades to the building, with a large porte-cochere for the children's safety and the signs to be eliminated. The maximum allowable site signage will be in compliance with Ordinance standards. The new sign proposed depicted on **Exhibit A-6** would be eleven (11) feet four (4) inches wide and two (2) feet eleven (11) inches high. The two (2) monument signs are depicted on Exhibit A-6. It was noted that the monument signs originally would each have four (4) placards to identify the tenants. The architect stated that the monument sign will now be changed, with only three (3) tenants with three (3) equal size spaces on the monument sign. The witness indicated that there would continue to be six (6) fascia signs on the building. In response to a question, the architect noted that the monument signs would be internally lit, and it was suggested by the Chairman that the lighting be similar to the lighting of the monument signs at the Sloan Kettering facility nearby. It was agreed that the applicant will review an alternate design for signage on the premises. The designation of tenants on the monument sign shall be based upon the number of tenants on the premises. The Chairman suggested that Spenga Fitness be designated for a fascia sign and that other signage be addressed at the time use permit applications are filed.

The architect testified that portions of the mansard roof as depicted on the elevations will be removed and will be replaced with a stucco finish and flat façade and flat roof.

15. Testimony on behalf of the application was provided by Mia Petrou, a licensed professional planner who was qualified in this field. Reference was made to **Exhibit A-8**, an aerial Exhibit of the subject premises which was marked into evidence. Commencing her testimony, Ms. Petrou stated that in preparation

¹ The transcript of this meeting indicates that no exhibit was marked as Exhibit A-3.

of the hearing, she reviewed the Zoning Ordinance, Master Plan Reexamination Reports, and inspected the subject property and the surrounding neighborhood. She first addressed the *d(1)* use variance for the proposed fitness center, noting that the applicable standard is governed by the decision in *Medici v. BPR Company* which requires that the site be particularly suitable to accommodate the use, as well as promote purposes and objectives of the Master Plan. Ms. Petrou stated that the building is easily adapted to accommodate the fitness center use and is particularly appropriate for a multi-tenanted structure with shared parking. In her opinion, the fitness center will be compatible for employees of the building, as well as nearby residents. She noted reference in the 2016 Master Plan Reexamination about vacancies in the corporate sector and that the subject property has been vacant for two years. The addition of the fitness center will, in the Planner's opinion, permit the upgrading and improvement of the building, and she noted that the 2016 Reexamination indicates a need for support facilities in the office sector, such as health clubs and restaurants. She stated that various purposes of the Municipal Land Use Law ("MLUL") would be advanced, including the providing of sufficient space and appropriate locations for a variety of uses, as well as the promotion of a desirable visual environment.

The Planner next addressed certain bulk variances that are required relating to setbacks of the canopies and covered awnings and signage. In her opinion, the setbacks for the entranceway and awnings permit an attractive architectural feature and cause no substantial detriment, noting that the awnings and canopies are open on the sides permitting the free flow of light and air, which are critical elements of setback requirements.

Addressing signage, the Planner stated that the site is irregularly shaped, with two frontages that need to be identified. She referenced the fact that landscaping along both West Grand Avenue and Craig Road obstructs to some degree the visibility of the building. She stated that the site has unique signage needs, both pertaining to monument signage and wall signage to adequately identify the property, as well as tenants to motorists on the roadway and persons seeking to access the premises. In the Planner's opinion, the applicant has satisfied both the positive and negative criteria for the granting of variance relief.

Marked into evidence as **Board Exhibit 2** was the report of Borough Planner Darlene A. Green of Maser Consulting dated August 10, 2020. The applicant's Planner was first questioned as to whether she agrees with the variances referenced by Ms. Green, and the issue was raised as to restrictions pertaining to color of signs. The Chairman indicated that it is his understanding that the applicant agreed to comply with Borough requirements pertaining to restrictions on color, to which Ms. Schepisi replied in the affirmative. It was determined that the variance for sign colors referenced in paragraph 8 at page 4 of Ms. Green's report was no longer required, and Ms. Green agreed that this variance was no longer required. Ms. Green noted that the variance noted in paragraph 4 at page 3 pertaining to number of signs is to be amended from ten (10) wall signs to six (6) wall signs, in addition to the two (2) freestanding monument signs. Counsel for the applicant agreed that the applicant will comply with the hours of illumination for signage. Ms. Schepisi also indicated that the applicant would comply with the conditions in Ms. Green's report.

Marked into evidence as Board Exhibit 3 was the report of the Police Department dated July 29, 2020 and as Board Exhibit 4 the report of the Fire Department dated August 30, 2020. Ms. Schepisi agreed that the applicant would permit *Title 39* enforcement on the site and further agreed that the quality camera system referenced by the Police Department in **Board Exhibit 3** would be installed at the entrance and exit of the property. Ms. Schepisi indicated that the applicant will cooperate with the Police Department to ensure that the site is not used a traffic cut through, as well as to address any security concerns of the Police Department. It was noted that the Fire Department has verified that fire apparatus has adequate maneuverability on the site, and a condition of approval will be gate access for the chain link fence provided to the Department. The Fire Zone will be required to be designated along the front curb of the building, and Ms. Schepisi indicated that this will be provided, as well as a Knox Box for each tenant. Existing designated parking spots will be required to be removed, and the Chairman indicated that when the day care facility seeks a use approval, signs for parking will be required to be reviewed at that time.

A discussion ensued as to façade signage and in response to a question from a Board member, Ms. Schepisi indicated that Spenga Fitness Center will have one (1) sign on the western façade in addition to being referenced on the monument sign. There are currently two (2) additional façade signs which will be utilized by a future day care center, with the fifth façade sign occupied by another future tenant.

A motion to open to the public was made by Mr. Stefanelli and seconded by Mr. Culhane. No one from the public wishing to speak, a motion to close was made by Mr. Teagno and seconded by Mr. Lintner. The board was in agreement to allow for the variance as outlined above.

A motion to have the board attorney prepare a resolution of approval was made by Ms. Cudequest And seconded by Mr. Stefanelli with all in favor stating aye.

RESOLUTIONS:

1. **Block 104, Lot 14-Moksha Investments, LLC-Resolution Granting Preliminary and Final Major Subdivision Approval, Variance Relief, A Major Soil Movement Permit, and Approval of an Environmental Impact Statement to Moksha Investments for Premises Designated as Block 104 Lot 14 also known as 89 Valley View Terrace Chairman read by title only.** A revised resolution was sent out via email. A motion to approve was made by Ms. Cudequest and seconded by Mr. Culhane with all stating aye.

https://drive.google.com/drive/folders/1cS1f96pkjVi2D4HwsgxiGaE5lbQn_04e

2. **Block 2405, Lot 16- Richard Alton-26 Franklin Avenue-Resolution Granting Variance Relief to Richard Alton for Premises Designated as Block 2405, Lot 16 for a garage addition Chairman read by title only.** A motion to approve was made by Mr. Stefanelli and seconded by Mr. Lintner with all stating aye.

Other Business-Resolution for Jimmy D’Agostino- A motion to approve was made by Ms. Cudequest and seconded by Mr. Stefanelli with all stating aye.

Open Meeting to the Public- no public present

Adjournment- A motion to adjourn was made by Mr. Culhane and seconded Mr. Stefanelli with all stating aye.

Next Regular Scheduled Meeting: October 20, 2020

Respectfully submitted by:

R. Lorraine Hutter, Land Use Administrator