

Introduced by:

Seconded by:

BOROUGH OF MONTVALE

PLANNING BOARD

**RESOLUTION GRANTING A USE VARIANCE AND A
REAR YARD SETBACK VARIANCE TO THE
BOROUGH OF MONTVALE FOR PREMISES
DESIGNATED AS BLOCK 1601, LOT 7**

WHEREAS, application has been made to the Planning Board of the Borough of Montvale (“the Board”) by the Borough of Montvale (“the applicant”), 12 Mercedes Drive, Montvale, New Jersey, for a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* and variance relief pursuant to *N.J.S.A. 40:55D-70c* relating to premises known as Block 1601, Lot 7 as depicted on the tax assessment map of the Borough of Montvale, being more commonly known as 26 North Kinderkamack Road (“the premises”, “the parcel”, “the property” or “the site”); and

WHEREAS, the applicant is the contract purchaser of the property, with the consent of the property owner GREC co LLC having consented to the filing of the within application; and

WHEREAS, the Planning Board considered the application at a public hearing held on June 2, 2020 and has made certain findings of fact and conclusions with respect to same; and

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

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

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

1. The subject property is located on the westerly side of Kinderkamack Road North at said roadway's intersection with Nottingham Court. According to the Borough tax map, the parcel comprises an area of approximately 15,000 square feet, with 100 feet of frontage along Kinderkamack Road North and just over 150 feet of frontage along Nottingham Court. The parcel is improved with a structure, a portion of which is used for residential purposes. More particularly, the first floor has been occupied for many years as a medical office for the practice of podiatry. The second floor is comprised of a residential unit.

2. The property is located in the R-15 Zone wherein is permitted single-family residences, as well as certain institutional uses such as houses of worship and municipal facilities. It is to be noted that the subject property originally received approval for the medical use on the first floor in 1992, although it appears that various medical uses utilized the first floor area of the existing structure for medical uses since at least 1976.

3. In March of this year, the Borough entered into a contract to purchase the property, which contract has been authorized by resolution of the Mayor and Council dated February 25, 2020 (Resolution No. 64-2020). The resolution provides that funding for the purchase will be provided by the Borough's Affordable Housing Trust Fund "for the purpose of converting the Property into a two-family deed restricted affordable housing unit". Since §128-5.1 of the Zoning Ordinance governing the R-15 District does not permit a two-family use, variance relief pursuant to *N.J.S.A. 40:55D-70d(1)* is required.

4. At the public hearing held on the application on June 2, 2020, the applicant was represented by Joseph W. Voytus, Esq. and Philip N. Boggia, Esq. In an opening statement, Mr. Voytus advised that the Borough is the contract purchaser of the property, and that the Borough's Spending Plan, which was approved along with the Housing Element and Fair Share Plan ("HE/FSP") in the Final Judgment of Compliance and Repose, allocates the sum of \$450,000.00 to purchase market-rate housing units and to convert same to affordable units. The Borough's COAH committee has been actively reviewing properties for possible acquisition for this purpose. He noted that the building presently contains a residential unit on the second floor and a podiatrist medical office on the first floor, with the latter portion of the building being leased through 2021.

5. Marked into evidence as Board Exhibit 1 was a report of Borough Planner Darlene A. Green of Maser Consulting dated May 8, 2020. Ms. Green and Borough Engineer Andrew R. Hipolit were both sworn and qualified in their

respective fields. Commencing her testimony, Ms. Green noted that the existing nonconforming property would be converted into a two-family structure containing two (2) affordable units. In addition to a *d(1)* use variance, §128-6.3 of the Zoning Ordinance limits one family per parcel in the R-15 District, which requires variance relief pursuant to *N.J.S.A. 40:55D-70c*. In addition, the property is presently nonconforming as to the rear yard setback which, at 12.3 feet, is less than the required rear yard setback of forty (40) feet. A second existing nonconforming condition relates to improved lot coverage which, at approximately thirty-nine (39%) percent, is in excess of the lot coverage limitation of thirty-five (35%) percent. As will be seen, a proposed modification to site conditions will eliminate this nonconforming condition (see ¶9 at p.6, *infra*).

6. The Board was advised by Ms. Green that the Judgment of Repose that the Borough received in 2018 included as part of the approval the Spending Plan which provides for the acquisition of market-rate units and their conversion to affordable housing. She stated that the conversion of the subject property to two (2) affordable units would constitute an inherently beneficial use. Conversion of the property for the affordable units will have no negative impact, as Ms. Green stated that there would be no changes to the property's exterior or to site lighting and parking. The changes to the structure will all be within the interior of the building. Ms. Green referenced the 2008 Master Plan, which indicates as a Goal the development of affordable housing at a reasonable cost. She noted that the property is located only one (1) lot

removed from the AHO-16 District, which is an inclusionary housing zone. In addition, the property is four (4) lots removed from the Affordable Housing Overlay Zone applicable to the B-1 District. Ms. Green stated that the Borough would receive from the property credits for the two (2) units toward its affordable housing obligation. Ms. Green emphasized that in the typical inclusionary development, fourteen (14) units would be constructed to generate two (2) affordable units, and that there is a real benefit to the Borough by not having the twelve (12) market-rate units that would ordinarily be required to be constructed to generate two (2) affordable units.

7. Testimony was provided by Borough Engineer Hipolit, and marked into evidence as Exhibit B-2 was the variance application which included a survey and map. The property currently has access from both Kinderkamack Road and Nottingham Court. The Chair questioned as to whether eliminating the curb cut from Kinderkamack Road would create a safer condition. Mr. Voytus stated that the applicant would have no objection to eliminating the curb cut on Kinderkamack Road, which he stated was used mostly by visitors to the podiatrist office

8. Ms. Green stated that one of the units should be a very-low income unit, with the other being a moderate-income unit. She noted that a minimum of thirteen (13%) percent of the Borough's affordable units must be very-low income units, and that it would be beneficial to have one of the units allocated accordingly. Referencing the Borough's Affordable Housing Trust Fund, Ms. Green stated that funds must be expended within four (4) years from the date

monies are deposited into the account, that the balance in the fund is "sizable" and "needs to be spent down by 2022". The Borough's acquisition of the property and its conversion to two (2) affordable units, both having two (2) bedrooms, will assist in this objective.

9. Borough Engineer Hipolit calculated that existing impervious coverage on the site is 5,863 square feet and that eliminating the curb cut and access from Kinderkamack Road, would reduce impervious coverage to 4,863 square feet, or from a noncompliant thirty-nine (39%) percent to a conforming thirty-two (32%) percent, thereby eliminating this variance.

10. In response to a question, Mr. Voytus stated that in the short term, the property would be leased and managed by the Borough, and may in the future be sold to an affordable housing developer. Construction Official Jeff Fette, a member of the Board, stated that he has viewed the interior of the structure, and that the existing podiatrist office can be reconfigured to a two-bedroom unit without any modification to the exterior of the premises. Mr. Voytus stated that the Borough would take title within several months of Board approval, subject to the existing lease for the podiatrist office on the first floor, with the two-bedroom unit on the second floor currently unoccupied. He stated that the costs incident to the conversion of the office to a residential unit would be paid from the Affordable Housing Trust Fund.

11. The Board was advised by Mr. Hipolit that two (2) residential units will usually generate less traffic than a doctor's office and a single residential unit. He stated that access from Kinderkamack Road is not desirable if access

from a municipal street is available. He noted that Bergen County officials seek to limit or eliminate access and curb cuts from a County road wherever possible.

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

1. The within application seeks variance relief pursuant to *N.J.S.A. 40:55D-70d(1)* to permit a structure located in the R-15 District presently having a medical office for a podiatrist on the first floor and a residential unit on the second floor to be converted to two (2) affordable residential units. The current use of the property is nonconforming, as only single-family residences are permitted in the R-15 District. The proposed two (2) affordable units would also not be permitted, thereby necessitating a *d(1)* use variance. Two variances are required pursuant to *N.J.S.A. 40:55D-70c*. Section 128-6.3 limits one (1) family per lot in the R-15 District, and two (2) affordable housing units are proposed. A second variance relates to the existing rear yard setback which, at 12.3 feet, is less than the forty (40) foot requirement. It is to be noted that another existing nonconforming condition pertaining to lot coverage will be brought into compliance by the elimination of the Kinderkamack Road driveway access.

2. Testimony in support of the application from Borough Planner Green noted that the subject property will be acquired by the Borough and two (2) new affordable housing units are to be created in the existing structure.

Acquisition of the property and the costs of converting the structure to the affordable units will be funded by the Borough's Affordable Housing Trust Fund Spending Plan. The Spending Plan was approved by the Superior Court in conjunction with the Borough's receipt of a Final Judgment of Compliance and Order For Repose in 2018. Ms. Green testified that the Spending Plan allocates up to \$450,000.00 for the purchase of existing homes and their conversion to affordable housing units. It is to be noted that the contract between the Borough and the property owner establishes a purchase price of \$414,000.00.

3. The Board finds that the applicant has satisfied the criteria for the granting of a use variance pursuant to *N.J.S.A. 40:55D-70d(1)*. The conversion of the existing building will create two (2) new affordable housing units. It is well-established that an entirely affordable housing development constitutes an inherently beneficial use. See **Homes of Hope, Inc. v. Easthampton Tp. Land Use Planning Board**, 409 N.J. Super. 330, 336 (App. Div. 2009). Furthermore, providing affordable housing inherently serves the general welfare. **Holmdel Builders Association v. Tp. of Holmdel**, 121 N.J. 550, 567-568 (1990). An inherently beneficial use presumptively satisfies the positive criteria for a *d(1)* use variance. **Burbridge v. Mine Hill**, 117 N.J. 376, 386 (1990). In view of the inherently beneficial nature of the proposed use and the providing of two (2) affordable housing units, the Board finds that the applicant has satisfied the positive criteria for the granting of a *d(1)* use variance.

4. In order to satisfy the negative criteria for the granting of the d(1) use variance, an applicant must demonstrate that the granting of relief will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. Where an applicant proposes an inherently beneficial use, the applicant must still demonstrate that any detriment or impairment is sufficiently outweighed by benefits to the public good. **Sica v. Bd. of Adjustment of Twp. Of Wall**, 127 N.J. 156, 165-166 (1992).

5. The Board finds that the benefits to be realized by the providing of two (2) affordable units clearly outweigh any possible detriment, in view of the fact that the use promotes the general welfare. See *N.J.S.A. 40:55D-2a*. Equally significant is the fact that the proposed use will create no detriment at all. No changes to the building are proposed, and the sole change to the exterior of the premises is the elimination of site access from Kinderkamack Road which the Board finds will enhance site safety. In addition to promoting public safety by having access to and from the premises to be via Nottingham Court, a municipal street, eliminating the Kinderkamack Road access drive will reduce impervious coverage, resulting in the elimination of a nonconforming condition and bringing the property into compliance with the lot coverage standard applicable to the R-15 District. In addition, the elimination of the office use and its replacement with a residential unit will likely result in a reduction of traffic to and from the site. Eliminating the office use will also bring the property into closer compliance with the use requirements applicable

to the R-15 District. For these reasons, the Board finds that the negative criteria for the granting of the *d(1)* use variance has been satisfied.

6. Approval of the use variance will advance the objectives of the HE/FSP which, as stated therein, is to provide low and moderate income housing consistent with the State requirements “in a manner that fits within the scale and character of the Borough of Montvale”. Furthermore, the 2008 Master Plan contains a Goal of providing affordable housing at a reasonable cost. As has been noted, the property is in close proximity to both the AHO-16 Zone and the Affordable Housing Overlay Zone applicable to the B-1 District. These factors constitute additional reasons supportive of the grant of the use variance and that approval may be granted without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance.

7. The above findings pertaining to the *d(1)* use variance are equally applicable to the two “c” variances that are implicated by the plan pertaining to number of families and rear yard setback. The Board finds that these variances are subsumed in the consideration of the *d(1)* use variance. **Price v. Himeji, LLC**, 214 N.J. 263, 301 (2013). Furthermore, the nonconforming condition pertaining to rear yard setback has existed for many years, is not being exacerbated by the conversion of the building to entirely residential and affordable, and would continue to exist even if the within application had not been filed. Accordingly, the variance relief pursuant to *N.J.S.A. 40:55D-70c* may be granted.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Montvale, that based upon the above findings of fact and conclusions that a use variance pursuant to *N.J.S.A. 40:55D-70d(1)* and variance relief pursuant to *N.J.S.A. 40:55D-70c* be and are hereby granted to the applicant to permit the existing structure to be converted into two (2) affordable residential units, subject to the following conditions:

1. The two (2) affordable units shall be deed restricted so as to provide one unit will be a very-low income unit and one moderate-income unit and shall be affirmatively marketed for rental in such manner so as to ensure that the Borough receives appropriate crediting for the units.

2. The access drive from Kinderkamack Road will be eliminated, and the sole means of ingress and egress to the site shall be from Nottingham Court.

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

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

5. The applicant shall conform with all requirements of the Construction Official, Borough Engineer, Borough Planner, Police Department,

Fire Department, and any other official having jurisdiction with respect to the use of the subject premises.

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

JOHN DE PINTO, Chairman

Dated: June 16, 2020

Certified to be a true copy of a Resolution adopted by the Planning Board of the Borough of Montvale at its regular meeting on Tuesday, June 16, 2020.

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