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March 16, 2020

PLANNING REPORT

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

Re: Ridgecrest Realty Associates, Inc.
21 Phillips Parkway
Block 3201, Lot 4
Review Letter #6
MC Project No. MPP-077

Dear Board Members:

The Applicant, Ridgecrest Realty Associates, Inc., is requesting approval to construct a three-story, 70-unit assisted living facility within the OR-4 District. The Application requires two D(3) conditional use variances, a D(4) FAR variance, and “C” variances, which are detailed in Section B below.

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

1. Plans entitled “Preliminary & Final Major Site Plan The Manor at Montvale”, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, dated June 18, 2018, revised through March 4, 2020, consisting of 16 sheets.
2. Plans entitled “The Manor at Montvale Architectural Design Package”, prepared by Bruce E. Englebaugh, R.A., of Minno & Wasko Architects and Planners, dated June 13, 2018, revised through March 3, 2020, consisting of 9 sheets.
3. Plans entitled “Topographic Survey of Property”, prepared by Marc J. Cifone, P.L.S. of Lakeland Surveying, dated January 18, 2018, consisting of 1 sheet.
4. Stormwater Management Report, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, dated June 18, 2018, revised through May 10, 2019.
5. Stormwater Management Maintenance Manual, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, dated September 21, 2018, revised through May 10, 2019.

6. Environmental Impact Statement, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, dated June 18, 2018, revised through September 21, 2018.
7. Site Plan Review & Variance Application, dated June 20, 2018.
8. Checklist for Informal and Formal Site Plan Review, no date.
9. Planning Board Soil Movement Application, no date.
10. Letter entitled “The Manor at Montvale”, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, dated September 27, 2018, consisting of 5 pages.
11. Memorandum entitled “Summary list of Architectural revisions”, prepared by Bruce Englebaugh, A.I.A. of Minno & Wasko Architects and Planners, dated November 9, 2018, consisting of 1 page.
12. Preferred Provider Medical Transport Agreement, prepared by Joseph Borer, VP of On Time Transport Inc. and On Time Ambulance, LLC, no date, consisting of 7 pages.
13. Document entitled “Planning Report in Support of a Variance Application for Block 3201, Lot 4”, prepared by Richard Preiss, P.P. of Phillips Preiss Grygiel Leheny Hughes, LLC, dated February 20, 2019, consisting of 24 pages.
14. Document entitled “Court Decisions Cited in Planning Report in Support of a Variance Application for Block 3201, Lot 4”, prepared by Phillips Preiss Grygiel Leheny Hughes, LLC, dated February 20, 2019.
15. Letter entitled “The Manor at Montvale”, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, dated February 20, 2019, consisting of 6 pages.
16. Email from Andy Delvecchio, Esq., dated March 16, 2020.

A. Surrounding Land Use and Existing Zoning

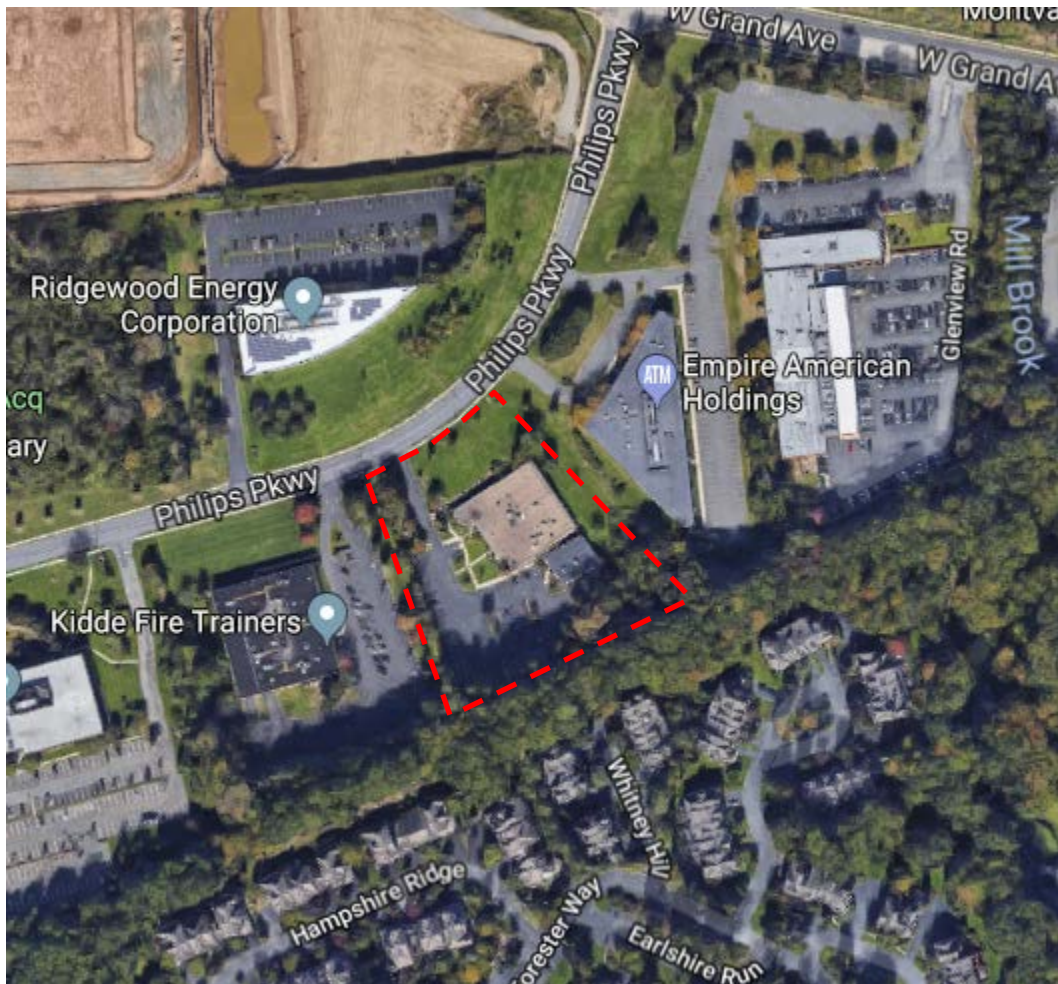
The site is currently occupied by a one-story medical office building. To the north, east and west of the site are office uses. A townhouse development (Bear’s Nest) in the Borough of Park Ridge lies to the south of the site. See the image on page 4 for the general location of the subject site.¹

The Applicant proposes the demolition of the existing structure and the construction of a 70-unit assisted living and memory care facility. The site is located in the OR-4 Office Research District, which allows assisted living facilities as a conditional use. Section 128-5.4F.(3) states that “Assisted living residences shall be permitted in the OR-3 or OR-4 District, provided that a minimum of 10% of the units are reserved for Medicaid-eligible persons such that the units will

¹ Image from www.google.com/maps

qualify as affordable units for the purposes of the Borough of Montvale's Housing Element and Fair Share Plan and that the following requirements are met”:

- a) Primary access shall be achieved from a road under the jurisdiction of Bergen County. *(does not comply)*
- b) Minimum lot size: 10 acres. *(does not comply)*
- c) Minimum lot width: 200 feet. *(complies)*
- d) Minimum front yard setback: 75 feet. *(complies)*
- e) Side yard setback:
 - [1] Minimum side yard setback: 50 feet. *(complies)*
 - [2] Aggregate minimum side yard setback (both sides): 100 feet. *(complies)*
- f) Minimum rear yard setback: 50 feet. *(complies)*
- g) Maximum lot coverage: as regulated in the underlying zone. (50%) *(complies)*
- h) Maximum FAR: 0.35. *(does not comply)*
- i) Maximum building height: 50 feet and three stories. *(complies)*
- j) Parking: 0.5 parking space per residential unit. *(complies)*
- k) Building exteriors shall have vertical and/or horizontal offsets and variations of construction materials to create visual breaks on the exterior. *(complies)*
- l) There shall be provided a safe and convenient system of sidewalks, accessible to all occupants. Due consideration should be given in planning walks, paths, and ramps to prevent slipping or stumbling. Handrails and ample space for rest shall be provided. All walks, paths and risers shall be designed according to the requirements of the Americans with Disabilities Act (ADA). *(complies)*
- m) A buffer area as defined in § 128-3.1, which shall be no less than 15 feet in width from all external property lines of the site. *(complies)*
- n) Sign regulations: as regulated in the underlying zone. *(complies)*
- o) Maximum 25 units per acre. *(complies)*



B. Variances

The Application requires the following “D” variances:

1. Section 128-5.4F.(3)(a) – D(3) conditional use variance for access. The Ordinance requires access from a County Road.

Phillips Parkway is not a County Road.

2. Section 128-5.4F.(3)(b) – D(3) conditional use variance for minimum lot size. The Ordinance requires a lot area of at least ten acres.

According to the plans, the site is three acres. However, dividing the square footage of the site results in 2.9979 acres.

3. Section 128-5.4F.(3)(h) – D(4) variance for an increase in the permitted Floor Area Ratio (FAR). The Ordinance allows a maximum FAR of 0.35.

The Applicant proposes a FAR of 0.41.² The Board should note the Applicant's previous submission requested a FAR of 0.42. They have decreased the building's square footage by approximately 1,300 square feet.

The Application also requires two "C" variances:

1. Section 128-7.1K. – Variance for landscaped islands. The Ordinance requires landscaped islands that total at least 5% of the parking area.

Landscaping is proposed adjacent to parking areas. However, no proof was provided to confirm compliance with the 5% minimum.

2. Section 128-7.5B.(2) – Variance for access drive setback. The Ordinance does not permit access drives to be closer than 75 feet to the front property line.

The Applicant proposes a portion of the one-way driveway that circulates around building to be within 75 feet of the front property line.

C. Variance Proofs

D(3) Variances

The Board should note that the Court held, in *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285 (1994), that the proof of special reasons that must be adduced by an applicant for a "d" variance from one or more conditions imposed by ordinance in respect of the conditional use shall be proof sufficient to satisfy the board of adjustment that the site proposed for the conditional use, in the context of the applicant's full site plan, continues to be an appropriate site for the use despite the deviations from one or more conditions imposed by the ordinance.

Prior to *Coventry Square*, courts treated a conditional use that does not comply with all of the conditions of the ordinance as if it were a prohibited use, imposing on the applicant the same burden of proving special reasons as would be applicable to use variances. According to the *Coventry Court*, that standard is inappropriate and does not adequately reflect the significant differences between prohibited uses and conditional uses that do not comply with one or more of the conditions imposed by ordinance. An Applicant's inability to comply with some of the ordinance's conditions need not materially affect the appropriateness of the site for the conditional use. The burden of proof required to sustain a use variance is too onerous for a conditional use variance and its focus is misplaced. Proofs to support a conditional use variance need only justify the municipality's continued permission for a use notwithstanding a deviation from one or more conditions of the ordinance.

The finding in *Coventry* was that a variance can be granted if problems are accommodated even if the conditions are not met and that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance. As such, proofs to support the requested "d(3)" conditional use variance should

² It should be noted that this is also a D(3) variance, which we believe is subsumed by the D(4) variance.

focus on the problems associated with the deviations from the conditional use requirements that are not met rather than the problems with the use itself.

D(4) Variance

The Board should note that the court found, in Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285 (1994), that the Applicant need not show “special reasons” that a site is particularly suited for more intensive development if the use is permitted. The Applicant is only required to demonstrate that the site will accommodate the problems associated with a larger floor area than that permitted by Ordinance. These problems typically involve the relationship of the proposal to the neighboring properties, such as intrusion into the side yard or visual incompatibility with the existing and surrounding buildings. The Board needs to determine whether the intent of zone plan and zoning ordinance will be substantially impaired by the proposed increase in floor area.

C Variances

NJSA 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the C(2) or flexible “C” variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

D. Design Waivers

This Application does not require any design waivers.

E. Comments

Based on our review of the above-referenced materials, we offer the following comments. For clarity, previously satisfied comments have been deleted. Text in italics reflects the current status of comments as a result of the updated plans.

General

1. The Applicant’s professionals must provide testimony to support the grant of the variances required by the Application. Testimony must address both the negative and positive criteria requirements of the MLUL.

Richard Preiss, the Applicant’s Planner, previously provided testimony to support the granting of the D(3), D(4), D(5), and “C” variances. It should be noted that the May 2019 Site Plans eliminated the D(3) variance for impervious coverage and the D(5) density variance.

2. *Since this office's May 16, 2019 letter, the Applicant has made several changes to the plans. Major changes include:*
 - *The building footprint has been reduced by 207 square feet from 20,605 square feet to 20,398 square feet.*
 - *The building's floor area has been reduced by approximately 1,300 square feet from roughly 54,840 to 53,540.*
 - *The concrete area has been increased by 188 square feet from 5,031 square feet to 5,219 square feet.*
 - *The number of affordable beds has been reduced from 14 (in seven affordable two-bedroom units) to nine beds. Note the information on nine beds is contained in an email from the Applicant's Attorney, Andy Delvecchio, received on March 16, 2020.*
 - *The number of one-bedroom assisted living units has increased from 16 units to 19 units, which has increased the total number of assisted living units from 29 to 42. Additionally, the assisted living units are now located on the first and third floors.*
 - *The 28 memory care units are now located on the second floor.*
 - *The Amenities list on Sheet A-1 of the Architectural Plans no longer includes the wine bar and resident pantry, reading room/den, or the covered terrace with ceiling fans.*
 - *The walkway from the building to the rear concrete paver patio has been amended.*

Architecture

3. The Applicant has submitted detailed floor plans for a two-bedroom assisted living unit, a one-bedroom assisted living unit, a one-bedroom memory care unit, and a two-bedroom memory care/AL unit. Each of these unit types are rectangular in shape. The Applicant should provide the floor plans for the irregularly shaped units.

Floor plans of the irregularly shaped units have yet to be submitted. It should be noted that the placement of the assisted living and memory care units have changed since our May 16, 2019 letter. The irregular units are now the one-bedroom assisted living corner unit on the first floor, the one-bedroom assisted living corner units on the second floor, and the two-bedroom memory care corner units on the third floor.

4. *The revised Floor Plans illustrate one one-bedroom and three two-bedroom affordable units on the third floor in the north wing of the building. However, the number of affordable beds has increased to nine. This will require the submission of new Architectural Plans to confirm the number of affordable beds.*
5. The revised Architectural Plans no longer include a basement level and exterior stair access. The Applicant shall provide testimony regarding the new location of the contents of the basement level as these areas are not shown on the revised Floor Plans.

This comment remains outstanding.

6. *The building now contains 70 units totaling 91 beds. There are 28 memory care units with 44 beds, 38 market-rate units with 40 beds, and four affordable assisting living units with*

seven beds. Note that Mr. Delvecchio's March 16, 2020 email indicates there will be nine affordable beds. Therefore, the unit and bedroom distribution above will be modified. Revised plans should be submitted.

7. *All of the one-bedroom memory care units are noted as 315 square feet. However, some units are clearly larger than others. This discrepancy shall be eliminated.*
8. *The front elevation on Sheet A-3 of the short-face facades does not match the floor plan. The second-floor floor plan illustrates a stepping back of the façade. The short façade facing Phillips Parkway is stepped back the same distance on the second and third floors, but the third floor is illustrated further back than the second floor on Sheet A-3. The short façade facing Empire is set back on the second floor and then pulled forward on the third floor on the floor plan. However, Sheet A-3 does not illustrate this. This discrepancy shall be eliminated.*
9. *Sheet A-1 has been revised to eliminate the wine bar and resident pantry, reading room/den, and covered terrace with ceiling fans listings. However, the fitness center amenity is still included in the list despite not being illustrated on the Floor Plans. A Wellness Center is illustrated on the Ground Floor Plan, is this the fitness center? Testimony shall be provided.*

Landscaping

10. *The Planting Schedule now indicates that 810 Ice Dance Sedges are proposed. However, the labels on the Landscape Plan indicate there are 850 Sedges. This discrepancy shall be eliminated.*

This comment remains outstanding.

11. *There is a label for 240 Myrtle groundcovers pointing to the sidewalk in front of the main entrance. However, no Myrtle groundcovers are proposed in this area. This discrepancy shall be eliminated.*

This comment remains outstanding.

12. *The Planting Schedule has been revised to indicate 220 Moonbeam Coreopsis groundcovers are proposed, while the labels on the Landscape Plan total 210 Moonbeam Coreopsis. This discrepancy shall be eliminated.*
13. *The Planting Schedule indicates there are 90 Duke Gardens Japanese Plum Yew shrubs proposed, while only 84 are illustrated on the Landscape Plan. This discrepancy shall be eliminated.*



Affordable Housing

14. *The revised Architectural Plans illustrate one one-bedroom affordable unit and three two-bedroom affordable units on the Third Floor Plan. However, Mr. Delvecchio's March 16, 2020 email indicates nine affordable beds will be provided. Revised Architectural Plans will be needed to confirm the number of credit-worthy beds.*

15. If the Board is inclined to approve the Application, the following should be conditions of approval:

- *The Applicant shall deed restrict at least **nine** of the assisted living **beds** for a minimum of 30 years. The deed restriction shall indicate the unit or apartment number of the affordable beds/units. The restriction shall be recorded prior to the issuance of any Certificate of Occupancy.*
- Deed restricted beds shall be licensed by the New Jersey Department of Health. Proof of licensure shall be provided to the Borough's Municipal Housing Liaison.
- If more than one affordable bed is within an apartment, the beds must be allocated to two unrelated individuals.
- A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.
- Low- and moderate-income residents cannot be charged any upfront fees.
- The affordable beds shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
 - Affirmative marketing (N.J.A.C. 5:80-26.15); provided that the units are restricted to the recipients of Medicaid waivers;
 - Low/moderate-income split and affordability average (N.J.A.C. 5:80-26.3(a), (d) and (e); only if all of the affordable units are affordable to households at a maximum of 60% of median income; and
 - Tenant income eligibility (N.J.A.C. 5:80-26.13(b)); up to 80% of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost on non-housing related services shall not exceed one and two-thirds times the rent established for each unit.
- The below documentation shall be submitted to the Borough's Municipal Housing Liaison at least 160 days prior to the issuance of any Certificate of Occupancy for the facility:



- A draft operating manual that includes a description of the program procedures and administration in accordance with UHAC;
- An affirmative marketing plan in accordance with UHAC if the units are not restricted to recipients of Medicaid waivers; and
- Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. 5:96-18.

Signage

16. The Applicant shall provide testimony if any signage is proposed, other than the monument sign.

This comment remains outstanding.

Details

17. Sheet C-16 illustrates “gravel with steel edging”. This detail was for the gravel walking path, which has been removed. This detail shall be removed.

This comment remains outstanding.

Should you have any questions with regard to the above comments, please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in blue ink that reads 'Darlene A. Green'.

Darlene A. Green, P.P., AICP
Borough Planner

DAG:hk

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