

John McDonough Associates, LLC

Land Use Planning · Landscape Architecture

PLANNING REPORT

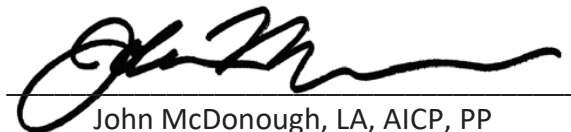
PREPARED FOR

BLAIR & AJA WASHINGTON

FOR PROPERTY LOCATED AT

**4 HARVARD TERRACE
BLOCK 41.01 LOT 123
TOWNSHIP OF WEST ORANGE
ESSEX COUNTY, NJ**

(May 3, 2024)

A handwritten signature in black ink, appearing to read 'John McDonough', is written over a horizontal line.

John McDonough, LA, AICP, PP
NJPP License #33LI00518900

The original of this report was appropriately signed and sealed in accordance with laws and regulations pertaining to the practice of Professional Planning in New Jersey (NJSA 45:14A and NJAC 13:41-1.3(b))

Project Location:

The project site is located at 4 Harvard Terrace in the Township of West Orange. The project site consists of one tax lot: Block 41.01, Lot 123, which contains approximately 7,500 square feet of land, with dimensions of 50 feet in width and 150 feet in depth. A 2-story single-family residential dwelling stands on the property. This is also a detached garage located at the end of the driveway as well as another accessory structure. The property is located within the R-6 District (One-Family Dwellings on 6,000 square foot lots). According to Essex County tax records, the dwelling was constructed in 1915.

Project Description:

The proposed project involves utilizing a detached accessory structure for the purposes of an early learning center/social emotional learning practice (herein after referred to as 'learning center'). Although 'home occupation' is a permitted accessory use in the R-6 District, a home occupation is required to be operated in a 'owner-occupied one-family residence'.

The applicant is requesting approval for a d(1) use variance.

Surrounding Land Uses:

Generally, the area surrounding the project site is characterized as primarily residential neighborhood. Immediately north of the project site is a 2.5-story single-family residential dwelling and to the south, there is also a 2.5-story single-family residential dwelling. Directly east, along the western side of Oxford Terrace, there is a 2.5-story single-family residence, and across the opposite side of Harvard Terrace to the west, there is a 2.5-story residential dwelling. It is important to note that each of these surrounding residences contain a detached accessory structure on the property, mainly utilized as an accessory garage.

Zoning Designation and Analysis

The project site is located in the R-6 District. As noted in Section 25-7.1 of the Land Use Regulations, the following are the permitted principal uses, accessory uses and conditions uses of the R-6 District:

- a) Principal permitted uses:
 - i. One family, detached dwelling
 - ii. Water reservoir, well tower filter bed
 - iii. Federal, state, county or township building
 - iv. Golf course and golf club house
 - v. Farm, nursery, greenhouse and similar uses
 - vi. Hospital
- b) Accessory uses:
 - i. Required accessory parking
 - ii. Private garage
 - iii. Home occupation
 - iv. Horticultural or agricultural building
 - v. Customary accessory building or structure
 - vi. Private swimming pool
 - vii. Private recreation facility
 - viii. Home occupation
 - ix. Home professional office
 - x. Signs
 - xi. Fences and dividing walls
 - xii. Private storage sheds
 - xiii. Greenhouses
- a) Conditional uses:
 - i. Public school
 - ii. Private school
 - iii. Library
 - iv. Museum
 - v. Park or playground
 - vi. Public utility building or structure
 - vii. Telephone exchange
 - viii. Private club, other than a golf club
 - ix. House of worship
 - x. Banquet and conference centers
 - xi. Additional off-street parking

Relief Sought:

As noted on the application, the Applicant is requesting approval for a **D-1 Use variance** (as the proposed ‘home occupation’ – learning center is not a permitted use within an accessory structure in the R-6 District)

Relevant Definitions (Section 25-4 of the Township Zoning Ordinance):

Home occupation shall mean any lawful activity not otherwise prohibited by this chapter performed in a legal owner-occupied one-family residence, including without limitation, consulting, telemarketing, dressmaking, manicuring, craft making or drafting. Home cooking for commercial purposes is not permitted.

Master Plan Review/Consistency:

2019 Master Plan Re-examination Report

The proposed project is consistent with the Township’s *2019 Master Plan Re-examination Report*. The following goals and objectives are furthered through the implementation of this application:

- 3. Provide and Preserve Adequate Light, Air and Open Space (pg. 7)
 - **COMMENT:** The current status of this goal in the 2019 Report notes that it is valid. The proposed project will allow for the home occupation/ social and emotional learning practice to operate in a small accessory building independent of the single-family dwelling. Open space will continue to be provided in the rear yard.
- 7. Provide Sufficient Space for Balanced Growth and Development (pg. 8)
 - **COMMENT:** The current status of this goal in the 2019 Report notes that it is valid and “it is imperative that adequate open space and community facilities are provided to accommodate residential and business growth.” The proposed social and emotional learning practice is small in scale; however, it will bring alternative educational opportunities for children in the Township. It will not cause any disturbance to any nearby neighbors.
- 9. Provide a Desirable Visual Environment (pg. 9)
 - **COMMENT:** The proposed social and emotional learning practice will provide a well-lit, attractive building for an appropriate and pleasant learning environment for children.

Based on these relevant goals and objectives, the proposed use would further the Township’s *2019 Master Plan Re-examination Report*. There is no substantial detriment to the public good or impairment to the Master Plan as the project will not negatively impact the R-6 District or adjacent residential dwellings.

Proofs:

Statutory criteria as set forth in the Municipal Land Use Law (Section 40: 55D-70d)

Positive Criteria:

In accordance with the Municipal Land Use Law [Section 40: 55D-70d(1)], relief is sought for the proposed home occupation. For the grant of a D-1 use variance the applicant must establish both the positive and the negative criteria. The former is typically achieved by the demonstration of **Special Reasons**. Special Reasons may be found where a variance would serve any of the purposes of zoning **or** if the applicant can show that the proposed use is peculiarly suited to a particular piece of property. In demonstrating the positive criteria, proofs shall consist of special reasons and particular cases how the proposed use will be beneficial the general welfare of the community. .

The following Purposes of Zoning, as stated in the MLUL 40:55D-2, will be advanced through the implementation of this project:

- **Section a:** To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the health, safety, morals, and general welfare.
- **Section c:** To provide adequate light, air and open space.
- **Section g:** To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.
- **Section i:** To promote a desirable visual environment through creative development techniques and good civic design and arrangement.

Particular Suitability:

In the context of the positive criteria, site suitability is not concerned with ordinance zoning criteria but is instead focused on special reasons: (1) why the location of the site within the municipality or region is particularly suited to the use despite the zoning and/or? (2) What characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use?

The *Smart SMR v. Fair Lawn* court cases recognized that Special Reasons could also be demonstrated when the proposed use would serve the general welfare because the “proposed site is particularly suitable for the proposed use”. The proposed learning center within an accessory structure should be considerate incidental to the residential dwelling. It would allow for the property owner, whose profession is as an educator, to offer these services in a small, safe and functional building apart from the dwelling. This will allow for a distraction-free learning environment and allows for the practice to be separate from that of the dwelling. This home occupation is akin to a social worker providing therapy sessions, an art/music teacher instructing lessons, or a small daycare facility. There will be no impacts regarding noise, light or traffic. This would also ease the cost for the property owner as they would not have to lease a commercial space to conduct their practice, and further, would not require a large space, and the specific limited

space necessary could be difficult to find locally. These space are likely to be too large of a floor area footprint and will usually be located adjacent to other commercial uses, which typically generate some noise during business hours. That could be disruptive to this specific practice, since children who attend this practice could have special needs whether its mentally, physically or emotionally (i.e., autism, ADHD, cerebral palsy, developmentally delayed), and thus could have issues related to an overstimulated sensory environment. This allows for a quiet, calmer location for the practice to occur, rather than in a commercial area, where there are large parking lots, numerous vehicles, and frequent patrons. To that end, the quaint nature of this property along Harvard Terrace creates a safe, natural and distraction-free setting fitting for child to learn, grow and develop. Lastly, it is important to note that the proposed use is permitted in the zoning district and on the property, but not in an accessory structure.

Negative Criteria:

In terms of the negative criteria, there are two prongs that must be met. The first prong is that there will be no substantial detriment to the public good. The second is that proposed project will not substantially impair the intent of the zoning ordinance or the Township Master Plan. As previously identified in this report, numerous goals, objectives and excerpts stated in the Master Plan will be advanced through the implementation of this project (see page 5 of this report).

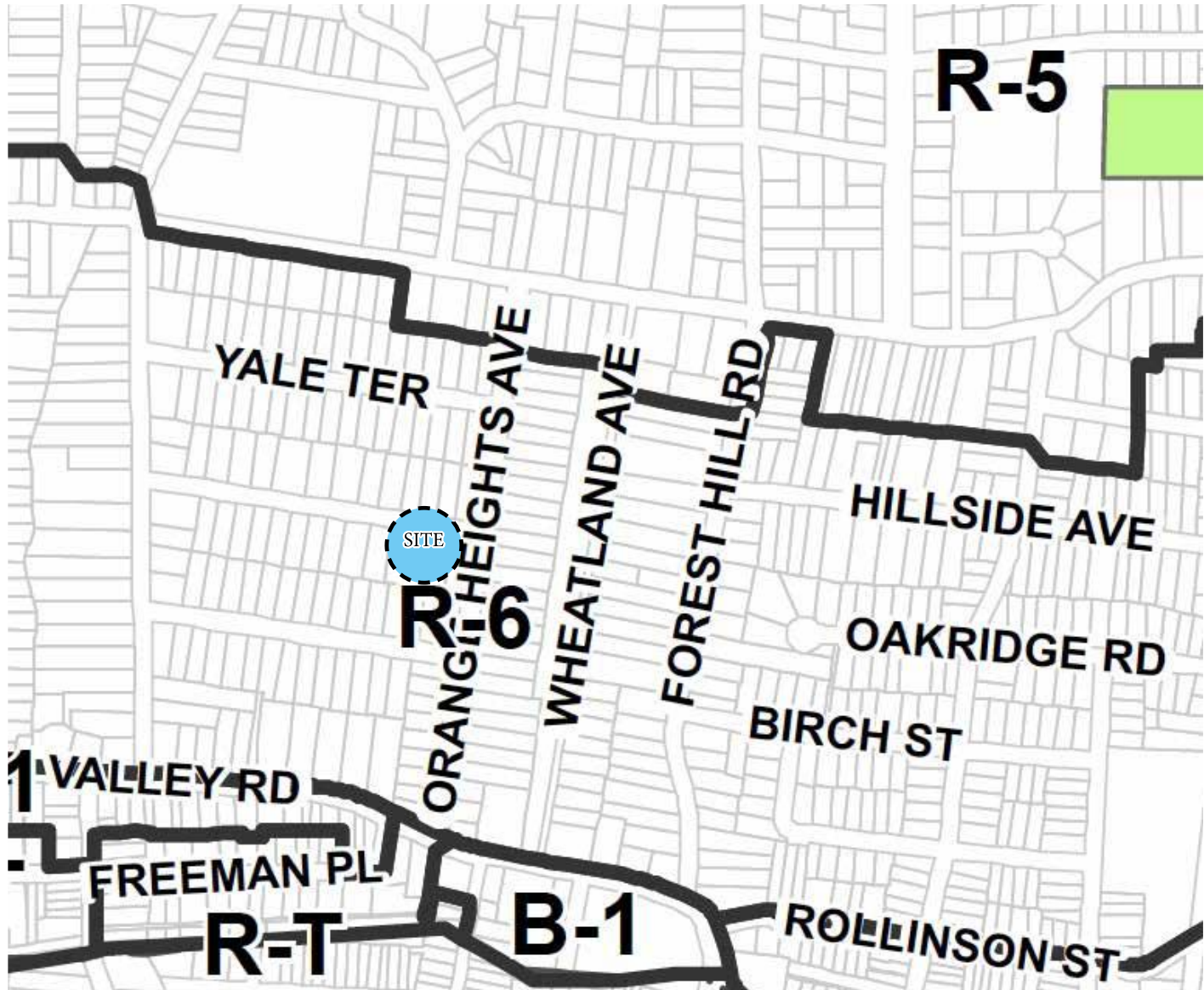
Based on these relevant goals and objectives, the proposed project would further the Township's 2019 Master Plan. There is no substantial detriment to the public good as the project will not negatively impact the R-6 Zone or adjacent uses. The operation of a social and emotional learning practice within an accessory building will allow for the instruction, tutoring and educational sessions to take place at a small building outside of the dwelling. This will permit each use to function separate from each other without any conflicts. Further, the design and layout of the accessory dwelling and proposed use will not negatively impact any neighboring residential properties. It will have numerous positive impacts, including offering alternative educational opportunities for children and promoting an attractive, safe and aesthetically pleasing environmental, and not cause substantial detriment to the public good. It is a better zoning alternative than the strict application of the R-6 District standards.

APPENDIX

Aerial Photo
Zoning Map
Site Photos



Aerial Photo. The project site is located along the eastern side of Harvard Terrace. (Source: NJ GeoWeb, accessed December 2023).



Zoning Map. The project site is located within the R-6 District (Source: Township of West Orange Zoning Map dated 2020).



Site Photo. View of subject accessory structure for subject home occupation use.

Qualifications of Preparer

John McDonough Associates, LLC is a land use planning and landscape architecture consulting firm with office location in Parsippany, New Jersey.

John McDonough, LA, PP, AICP is a licensed professional planner and landscape architect in the State of New Jersey. Both licenses are current and in good standing. He is also a member of the American Institute of Certified Planners.

All licenses have been obtained through requisite showing of educational and experience requirements and passing of license examinations (none have been achieved through reciprocity). All licenses have been maintained through participation in mandatory continuing education courses.

Mr. McDonough has been practicing as a land use consultant in New Jersey for over 37 years. He has been recognized as an expert in land use matters before hundreds of boards and commissions throughout the State of New Jersey, and in Superior Courts.

He has been a regular speaker at the New Jersey League of Municipalities annual conference and at Rutgers University Bloustein School of Planning and Public Policy, and at the annual conference of the American Institute of Architects (AIA).