



MEMORANDUM

To: Chairman and Members of the
West Orange Zoning Board

From: Malvika Apte, PP, AICP 
Zoning Board Conflict Planner

Date: May 16, 2022

Re: Application No. Z-22-02
Monarch Development Group JV LLC
Application for Use Variance & Bulk Variance Approval - Review #1
Proposed Multi-Level Senior Housing Facility
481 Eagle Rock Avenue
Block 152.01, Lot 1445.01
Our File: VWRZ0152.04

INTRODUCTION: PROPOSED DEVELOPMENT

The Applicant, Monarch Development Group JV, LLC has applied to the Zoning Board seeking approvals to construct an assisted living/senior housing facility at the site along with continued use of the Mayfair Farms wedding and banquet facility. The Applicant requires and is currently seeking d (1) use variances, a d (6) height variances, and bulk and supplemental zone variances to permit the project. The Applicant has chosen to bifurcate the approvals for this project; if the Board grants the variances currently requested the Applicant plans to apply for subdivision and site plan approvals. The subdivision approval will allow the existing Mayfair Farms facility and the proposed senior housing facility to be located on separate lots. ***Since this is a bifurcated application, the Board may choose to only review the use variances and leave the bulk variances to be discussed during the site plan/subdivision application.***

The senior housing building will be located on proposed Lot "B" and will contain a total of 180 units consisting of 106 congregate apartments, 49 assisted living units and 25 memory care units. Parking for 144 vehicles is proposed for the senior housing facility including 5 handicap accessible parking spaces and 4 make-ready electric vehicle parking spaces. The bonus for Make-Ready/EV spaces provides a total count of 148 spaces for the proposed assisted living development. A loading area is also proposed within the interior of the site. Additional features proposed for the senior living facility include walking paths, a garden area, and a "porous traffic rated decorative paver" area with eight parking spaces. Further explanation on the reason this area is proposed should be provided. Access to the property from Eagle Rock Avenue is provided via an access drive on Lot "A," the proposed lot that will include the existing Mayfair Farms banquet hall facility. ***Applicant must confirm that a permanent access easement will be created to allow this access drive to be used by Lot "B" in perpetuity.*** In order to accommodate the proposed senior housing facility, the parking for Mayfair Farms will be reduced from 236 parking spaces to 98 parking spaces including 4 handicap accessible parking spaces.



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This is a significant loss of parking spaces and requires an off-street parking variance, as the banquet use requires a total of 264 parking spaces. Applicant must provide testimony regarding the operations of the Mayfair Farms banquet/catering facility, as noted under the Additional Comments section later in this review.

In addition to the access drive noted above, Applicant also proposes new asphalt within a limited section of the existing parking area on proposed Lot "A," and four (4) new parking spaces near the entrance to the Mayfair Farms principal building. These parking spaces include three ADA-accessible spaces. A brick walkway is also proposed between these spaces and the building.
Applicant to confirm that these are the only proposed improvements to Lot "A."

SUBJECT SITE AND SURROUNDING LAND USES

The subject property is identified in the Township's Tax Maps as Lot 1445.01 in Block 152.01. This irregularly shaped tract of 10.93 acres is located on the northerly side of Eagle Rock Avenue, west of the Avenue's intersection with Prospect Avenue. It is located in the B-2 Zoning District, and a portion of the eastern half of the property is developed with Mayfair Farms wedding and banquet facility which includes on-site parking for 236 vehicles. This parking lot spills over from the eastern half of the property onto the southwestern quadrant of the lot, where the proposed assisted living/congregate facility is proposed (the construction of the assisted/congregate living facility necessitates removing this parking area). The rest of the property is minimally developed, with landscaping related to the wedding and banquet facility located to the rear of the existing building.

As the proposed development is not a mixed-use project, the guidelines regulating the B-2 District prevail.

Directly to the east of the subject property is a commercial shopping center, while to the south and west are single-family residential dwellings (although there are additional commercial uses to the southeast). Immediately to the north of the site is a heavily forested open space area, beyond which are additional single-family dwellings.

SUBMISSIONS

Item	Title	Signed By	Date/Revision
ALTA/NSPS Survey (2 Sheets)	"Mayfair Farms 481 Eagle Rock Avenue"	Unsigned – James D. Sens, PLS listed	9/24/2021
Variance Plan (4 sheets)	"Use Variance Plan for Monarch Communities"	Unsigned – A. Tamous of Bohler Engineering NJ, LLC listed	2/1/2022



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Architectural Plans (10 sheets)	"Monarch 481 Eagle Rock Ave. West Orange, NJ"	Erik D. Anderson, RA	3/18/2022
Traffic Impact Analysis (41 pages)	"Traffic Impact Analysis for Monarch Communities Proposed Senior Housing Facility"	Paul B. Going, PE David W. Fahim, PE	3/29/2022

"D" VARIANCES REQUIRED

<u>"d" Variances</u>			
Section / Requirement	Permitted / Required	Existing	Proposed
25-7.1 (Table of District Regulations Part A: Permitted Uses Table) B-2 District: General Business	B-2 General Business: • Retail Store • Personal service store or studio • Office or office building • Business or vocational school • Restaurant • Bar • Massage, bodywork, or somatic therapy establishment • Fitness center/health club IHO-1 Inclusionary Housing Overlay: • Mixed use with non-residential on first floor and dwelling units above	Wedding and Banquet Facility	<u>After Subdivision:</u> Lot "A": Wedding and Banquet Facility <i>d (1) variance required</i> Lot "B": Senior Living / Assisted Living Facility <i>d (1) variance required</i>
25-7.1 (Table of District	Height: 2.5 stories and not exceeding 35 feet	<i>To Be Confirmed</i>	<u>After Subdivision:</u> Lot A: <i>To Be Confirmed</i>



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Regulations Part B: Bulk Standards)			Lot B: 4 stories / 52.59 above average grade d (6) height variance required
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1. The following analysis of d (1) use variances are based on the planned subdivision of the subject property. **Approval of these variances should be conditioned upon the Applicant applying for and receiving preliminary and final subdivision approval from the Zoning Board.**
 - a. The existing wedding and banquet facility that is proposed to remain is not a permitted use in the B-2 District. **The Applicant has requested a d (1) use variance to continue the use of the property by this facility.**
 - b. The proposed senior living / assisted living facility is not a permitted use in the B-2 District. **A d (1) use variance is required and has been requested by the Applicant.**
2. The existing wedding and banquet facility on the subject property and that is proposed to remain appears to meet the height requirements of the B-2 District. The exact height shall be confirmed at the Board hearing and the "Use Variance Plan for Monarch Communities" sheets revised to provide the measurement.
3. The proposed senior living / assisted living building will include four (4) stories and have a height above the average grade of 52.59 feet. This is both ten (10) feet over the permitted height of 35 feet and in excess of ten percent (10%) of the permitted height. **A d (6) height variance is therefore also required.**

BULK AND SUPPLEMENTAL VARIANCES REQUIRED

Per §25-20. d, the bulk regulations for the IHO-1 Inclusionary Housing Overlay only apply to mixed-use developments. As the existing and proposed developments are not mixed-use, only the B-2 District bulk regulations apply and have been considered.

Since this is a bifurcated application, the Board may choose to only review the use variances and leave the bulk variances to be discussed during the site plan/subdivision application.



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Bulk and Supplemental Variances			
Section / Requirement	Permitted / Required	Existing	Proposed
25-7.1 (Table of District Regulations Part B: Bulk Standards)	Height: 2.5 stories and not exceeding 35 feet	To Be Confirmed	<u>After Subdivision:</u> Lot "A": <i>To Be Confirmed</i> Lot "B": 4 stories – <i>Variance Required</i>
25-7.1 (Table of District Regulations Part B: Bulk Standards)	Maximum Lot Coverage: 60%	38.3%	<u>After Subdivision:</u> Lot "A": 57.1% Lot "B": < 60% - <i>exact amount should be provided</i>
25-8.1. a	No accessory uses located within any minimum required front or side yard	Parking within front yard setback area	<u>After Subdivision:</u> Lot "A": Parking within front yard setback area. <i>Existing non-conformity.</i> Lot "B" – Garden area with walking path. <i>Variance required.</i>
25-8.2	The space in a required front, side, side front yard or rear yard shall be open and unobstructed	Parking lot in front yard setback area	<u>After Subdivision:</u> Lot "A" – Parking lot in front yard setback area. <i>Existing non-conformity.</i> Lot "B" – 6' tall vinyl fence, garden walkway, and modular block wall proposed. <i>Variance required.</i>



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Bulk and Supplemental Variances			
Section / Requirement	Permitted / Required	Existing	Proposed
25-8.4. a	Walls and fences which are not more than 50% solid are permitted anywhere on the property, in all districts, provided they are not higher than four feet.	Six-foot-high wood fence in side yard meeting requirement of 24-8.4.c	<u>After Subdivision:</u> Lot "A" – Six-foot-high wood fence in side yard meeting requirement of 24-8.4.c Lot "B" – 6' tall vinyl fence in front yard setback area. Variance required. Additional details required.
25-8.11	Green roof requirements	None existing (to be confirmed)	<u>After Subdivision:</u> Lot "A" – None existing (to be confirmed) Lot "B" – "Membrane roof" proposed. Applicant to confirm compliance with this section.
25-11.2	Side yards of nonresidential buildings on lots which are contiguous to the boundary of any residential district shall have a minimum required width of 75 feet	390-foot setback from side property line bordering residential district	<u>After Subdivision:</u> Lot "A" – Not Applicable Lot "B" – 51.3-foot setback from side property line bordering residential district. Variance required.
25-12.2. b.1	Catering facilities – higher of: 1 for each 3 seats/stools or 1 for each 45 sq. ft. available to patrons = 264 required	236	<u>After Subdivision:</u> Lot "A" - 98. Variance required.



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Section / Requirement	Permitted / Required	Existing	Proposed
	Assisted living or congregate care facility: 1 per bed = 210 required	N/A	Lot "B" – 148 (144 with 4 EV spaces). Variance required.
25-12.4. a.2	Access drive to an off-street parking area may be located in required side yard but shall not be located within five feet of side lot line	Front of eastern most access drive is located within five feet of eastern property boundary. This is to remain. Noted as existing non-conformity.	After Subdivision: Proposed western access drive to both proposed lots is provided by access drive on Lot "A." The access to Lot "B" splits off from this main drive and into side yard setbacks for both properties. Variances are required for both properties.
25-12.4. a.5	Parking areas and truck-loading spaces shall have safe and adequate access to public street either by a driveway on the same lot or a permanent access easement across adjoining lot	Complies	After Subdivision: Lot "A" – Complies. Lot "B" – Applicant must confirm access easement to be provided.
25-13	Environmental Impact Analysis		Project not exempt, per 25-13.2. a. Applicant to confirm EIA document will be part of site plan application.
25-14	Lighting		Applicant to confirm lighting plan will be part of site plan application.
25-15.3.2. (b)	Wall Sign Standards – 1 permitted per business, no more than 15% of façade	Unknown – to be confirmed if any exist	Site plan notes one wall sign of 120 sq. ft. is proposed and will not project more than 1



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Section / Requirement	Permitted / Required	Existing	Proposed
	area and project no more than 1 foot from façade		foot from façade. Location is not noted on site or architectural plans. It is not clear if this the proposed wall sign for Lot "A" or Lot "B." This must be provided as part of site plan approval.
25-12.3.2. (d)	Maximum area of monument/freestanding sign is 50 sq. ft.	Unknown – to be confirmed.	One freestanding sign is proposed near western driveway entrance on Lot "A." Sign area is 101.50 sq. ft. We recommend reducing sign size. Further comment will be provided during site plan approval phase if Board grants use variance approvals.
25-12.3.2. (d)	Maximum sign width of monument/freestanding sign is 6 ft (including support structure)	Unknown – to be confirmed.	One freestanding sign is proposed near western driveway entrance. Sign width is 14 ft. Variance is required. We recommend reducing sign size. Additional details on design shall be provided.
25-18.24	Development Fees for Nonresidential Developments		If no units of assisted/congregate living are affordable, a development fee may be applicable. This needs to be approved by the Township, since the site is part of an overlay district that is



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Bulk and Supplemental Variances			
Section / Requirement	Permitted / Required	Existing	Proposed
			<i>part of the housing agreement</i>
25-27	Tree Protection and Removal		<i>Applicant must comply with this section. Applicant has submitted Landscape Plan with Tree Removal & Replacement Calculations. Further comment will be provided during site plan approval review if use variances are approved.</i>
25-28.8. b	Disturbance of steep slopes with 25% or greater slope is limited to 0% maximum disturbed area		<i>Project disturbs slopes greater than 25% on Lot "B". Variance is required. Applicant must confirm how much is being disturbed and if slopes of different percent slopes are being disturbed.</i>
25-28.8. d	Effective lot area for all districts is reduced based on slopes present on the lot		<i>Applicant's engineer shall confirm the amount of steep slope area and compute effective lot area.</i>

ADDITIONAL COMMENTS

1. As noted previously, the Applicant has chosen to bifurcate this project. This application deals with the use and height variances, along with the identified bulk and supplemental variances noted above. These bulk variances are subject to change if the Applicant chooses to change the plans for the project. If the Board chooses to grant



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the use variances, submission of application for site plan approval should be made a condition of approval.

2. We reserve additional comments regarding site layout for the site plan approval phase, should the Board grant the use and height variances.
3. The property is also located in the IHO-1 Inclusionary Housing Overlay District, in accordance with a court settlement agreement. This property has been listed as one of the sites to meet the Township's unmet need. This was part of Township settlement agreement with Fair Share Housing Center. Applicant should discuss if any compliance with the housing element and fair share plan is proposed and if any set-aside is proposed for this development. ***We defer to the Township Attorney and/or Township Planner to discuss the creditability of the set-aside if proposed.***

4. A detailed testimony on both the existing and proposed uses should be provided to the Board. This should include but not limited to, the number of functions anticipated at Mayfair Farms, the number of attendees (maximum occupancy), number of employees, outdoor functions, noise impacts, parking impacts, refuse and recycling and other such details.

For the proposed senior facility of 180 units, details on type of services, number of employees, operations, visiting hours, security and any other details as required should be provided.

5. The proposed number of Make-Ready EV spaces (4) on Lot "B" complies with the State-mandated Make-Ready/EVSE Ordinance. As the proposed development will include site plan approval for proposed Lot "A," the State-mandated Make-Ready/EVSE Ordinance applies to Lot "A." Per the Ordinance, three (3) Make-Ready spaces are required for Lot A. These should be identified on the plans during the site plan approval phase, should the Board approve the use variances.
6. Applicant should be prepared to discuss the area of and floor plans for the assisted, congregate, and memory care living units. This should include operations as it relates to common dining facilities, medical facilities on site as well as security plan for vulnerable residents such as individuals in Memory Care. Example of unit floor plans should be provided, and comparisons with industry standards should be discussed to ensure the living spaces are adequate for the intended residents.
7. Applicant should discuss with the Board operations of the commercial kitchen, including delivery operations, number of meals expected, mealtimes, etc.
8. It should be noted that banquet and conference centers are conditionally permitted uses in R-4, R-5, R-6, R-T, R-G, and R-M districts. Assisted living and congregate care facilities are conditionally permitted uses in the R-G, R-M, OB-1, OB-2, R-C and PURD



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districts. Applicant should discuss how proposing these uses in a not permitted area of the Township is a positive development for the Township.

9. Applicant shall confirm that facility will be licensed by the State of New Jersey.

VARIANCE PROOFS

The proposed development requires two d (1) use variances. To receive the variances, the Applicant must demonstrate “special reasons” exist to approve the variance. Improvements to safety, health, and aesthetics of the premises in question do not alone give rise to special reasons. The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. The type of analysis the Board must undertake depends on whether the proposed use is “inherently beneficial.” The existing use of the Mayfair Farms facility is not considered by New Jersey courts or the Municipal Land Use Law to be inherently beneficial and therefore must meet a “site suitability” test. The Board must determine whether the assisted and congregate living facility is an inherently beneficial use.

The courts have determined that special reasons include a showing by the applicant that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the master plan. This is the “positive criteria” of the statute. Courts in the State of New Jersey have determined that a use determined to be “inherently beneficial” satisfies the positive criteria because they are assumed to promote the general welfare, one of the purposes of zoning. The term “inherently beneficial use” is defined similarly in the MLUL (NJS 40:55D-4), which includes the following uses as examples: “a hospital, school, childcare center, group home, or a wind, solar or photovoltaic energy facility or structure.” In *Sica v. Board of Adjustment of the Township of Wall* 127 N.J. 152 (1992), the State Supreme Court determined that if a use is found to be inherently beneficial by a Board, then the proposed use does not need to satisfy the enhanced quality of proof requirements set out by the Court in *Medici v. BPR Co.* Site suitability also does not apply to an inherently beneficial use.

However, if a site is not determined to be inherently beneficial, the Applicant must be prepared to provide testimony demonstrating that there are “special reasons” to permit the nonconforming use and that the site in question is **particularly suited** to the use. In the case of *Price v. Himeji, LLC*, the Court held that a Zoning Board should not determine that a property is particularly suited to the use simply because it is the most suitable site in the municipality for the use. The use should be appropriate and especially beneficial based on the unique conditions of the site and its surrounding area. The d (1) use variance to allow the banquet facility to continue on proposed Lot “A” must meet this site suitability test. The Board must determine if the assisted living/congregate living/memory care facility is inherently beneficial or must also meet the site suitability test.

To address the negative criteria, the applicant must demonstrate that the proposed variance can be granted without substantial detriment to the public good nor will the granting of the variance substantially impair the intent and the purpose of the zone plan and zoning ordinance of the



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municipality. However, the Court in *Sica* further determined that in the consideration of a use variance for an inherently beneficial use, the positive and negative criteria must be carefully weighed and balanced to find if the negative criteria is *substantial* enough to deny the variance.

The Court recommended the following four-step procedure for the Board to balance the positive and negative criteria for a use variance in an inherently beneficial use case:

1. Identify the public interest at stake (that is, what is the public benefit of the use?).
2. Identify the detrimental effect that will ensue from the grant of the variance. (what public problems could arise from the use?).
3. Consider reducing the detrimental effect by imposing reasonable conditions on the use (how can the public problems be reduced?).
4. Weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

The proposed development also requires a d (6) height variance. The Board has the power to grant d (6) variances to permit a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district pursuant to N.J.S.A. 40:55D -70d (6) "in particular cases and for special reasons." This is the so-called positive criteria of a d (6) variance. Our Courts have found that the special reasons which may provide for a d (6) density variance may include demonstrating an undue hardship. This would entail showing that the height restriction would prohibit the use of the property for a conforming structure. Alternatively, an applicant could demonstrate that the proposed increased height of the building does not act against the purposes of the height restriction. In *Grasso v. Bor. of Spring Lake Heights*, 375 N.J. Super 41 (App. Div. 2004), the Court discussed the height restriction purposes in terms of light and air concerns and as a means of controlling density.

In addition to the positive criteria, no variance or other relief may be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. This is known as the negative criteria. Courts have held that in a d (6) variance applicant must demonstrate that the increased height would not have detrimental effect on the community. As mentioned above, this can include air and light concerns, but can also include wide-ranging visual environment impacts, as found in the Appellate division in *Jacoby v. Englewood Cliffs Zon. Bd. Of Adjustment*, 442 N.J. Super. 450, 459-461 (App. Div. 2015)

Several bulk and supplemental variances are also required to permit the proposed development. For these, should the Board choose to consider them at this time, the Board has the power to grant a c (1) hardship variance or a c (2) benefits vs. detriments variance. An applicant requesting a c(1) variance must show that (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or structure lawfully existing



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thereon, the strict application of any would result in particular and exceptional practical difficulties or undue hardship upon the developer of such property.

An applicant requesting a c (2) variance must prove that granting of the variance will advance the intent and purposes of the Municipal Land Use Law and that benefits of granting of the variance will substantially outweigh the detriments.

With both, negative criteria must be addressed. No variance may be granted without showing that such a variance can be granted without substantial detriment to public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

The Board should:

- Evaluate the testimony to determine whether it should elicit additional information to supplement the record;
- Make specific findings of fact based on the record to support its conclusions;
- Consider whether, in lieu of denying an application, it can approve it subject to reasonable conditions which would modify the proposal and obviate or minimize any negative impact;
- Remember to be conscientious in its review of the facts since outright denial may amount to confiscation, this requiring condemnation by the municipality.

If you should have any questions with regard to the above matter, please do not hesitate to call.

MA:nf

CC: Diana L. Chandler- Zoning Board Secretary
Leonard Lepore, PE – Township Engineer
Alice Beirne, Esq. – Zoning Board Attorney
John J. Hess, PE, PP, CME – Zoning Board Engineer
Monarch Development Group JV LLC – Applicant
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Erik Anderson, RA – Applicant's Architect
Ahmad Tamous, PE – Applicant's Engineer