

PROFESSIONAL PLANNING REPORT IN SUPPORT OF VARIANCE REQUEST FOR
MONARCH DEVELOPMENT GROUP JV LLC

TOWNSHIP OF WEST ORANGE
ESSEX COUNTY, NEW JERSEY

The original document was appropriately signed and sealed on MAY 27, 2022 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.


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INTRODUCTION

This report provides a planning analysis and conclusions of the proposal set forth by Monarch Development Group JV, LLC seeking to construct an assisted living/senior housing facility at 481 Eagle Rock Avenue. This site is known as Block 152.01, Lot 1445.01 and is currently developed at the site along with continued use of the Mayfair Farms wedding and banquet facility. The application has been bifurcated, and therefore only a D(1) use variance and a D(6) height variance. If the Board grants the variances that are currently being requested, the applicant plans to apply for subdivision and site plan approvals. The subdivision approval will allow the existing Mayfair Farms facility to remain and the proposed senior housing facility to be located on separate lots. This will require subdivision and site plan approval.

This report includes a review of the subject site, existing conditions, the Township's zoning regulations, and the West Orange Master Plan Documents. The last section addresses the necessary statutory criteria for the variance requests and provides the overall planning conclusion.

PROPERTY DESCRIPTION

The subject site is located on the north side of Eagle Rock Road immediately to the east of its intersection with Prospect Avenue. It is identified in the Township's Tax Maps as Lot 1445.01 in Block 152.01. It is 476,210 square feet (10.93 acres), located in a zone that has a minimum required lot area of 10,000 square feet. This results in a site that is almost 48 times the permitted minimum lot area. It is currently developed with the Mayfair Farms wedding and banquet facility, which includes on-site parking for 236 vehicles. It is an existing non-conforming use, since 1942. Detailed below the site's boundaries are approximately outlined in red.



The eastern half of the property is developed with a parking lot to the southwestern quadrant of the lot, where the assisted living/congregate facility is proposed. The rest of the property is comprised of with landscaping related to the wedding and banquet facility located to the rear of the existing building.

Directly to the east of the subject property is a commercial shopping center, to the south and west are single-family residential dwellings and additional commercial uses to the southeast. Immediately to the north of the site is an open space area.

HISTORY OF SITE

A local businessman Martin L. Horn Sr. purchased the subject site in 1942, which is adjacent to the Eagle Rock area. Mr. Horn began an extensive renovation that transformed a gracious home and its surrounding property into a private luncheon club, The Mayfair Club. In the years that followed, the club evolved into a restaurant and catering facility now known as Mayfair Farms.

PROPOSED DEVELOPMENT

The senior housing building will be located on proposed Lot “B” after the subdivision 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 (including 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.

The proposed site plan will also include walking paths, a garden area, and a “porous traffic rated decorative paver” area with eight parking spaces. Access to the property would remain from Eagle Rock Avenue via an access drive on Lot “A,” which is the existing Mayfair Farms banquet hall facility. 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.

MASTER PLAN DOCUMENTS

The 2010 Master Plan Reexamination Report notes that, “The Mayfair Farms and other catering and special event facilities contribute to the economic base of West Orange.” It further states that the Master Plan recognizes a need to balance commerce and provision of services and others with the preservation of neighborhoods and open space.

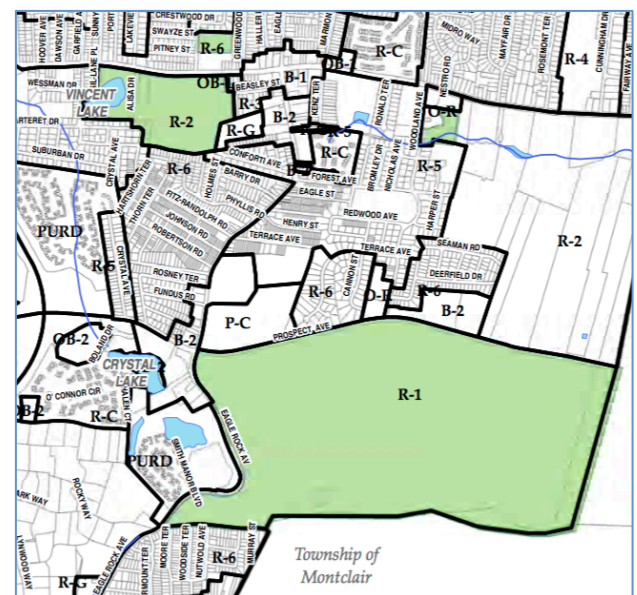
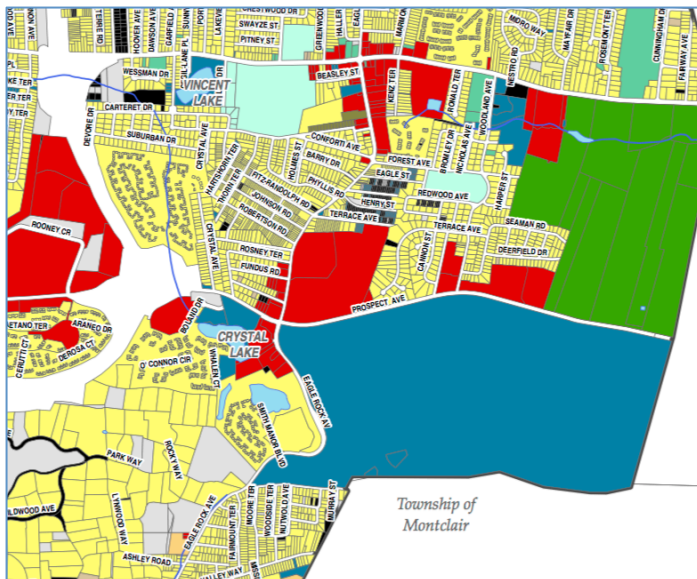
Given the size of the site and its existing development as a commercial use as well as the varied surrounding development pattern. The proposed use is appropriate for the site with minimal impairment, if any to the surrounding area. Further the Master Plan recognizes this site as an economic benefit to the Township.

2004 Master Plan Goals

- **Provide Sufficient Space for Balanced Growth and Development:** The 2004 Reexamination report discussed the need to provide sufficient space in appropriate locations for residential, recreational, commercial/retail, industrial and open space uses in a manner that would provide balanced growth and development.
- **Properly Locate Public, Commercial/Retail, Industrial, Residential and Service Uses:** The 2004 document reemphasized the need to locate public, commercial/retail, industrial, residential and service uses at sites and locations which are suitable for their use environmentally, economically, and geographically, and can be adequately serviced by public infrastructure.
- **Economic Development:** The 2004 report noted that development that generates employment opportunities and beneficial commercial/retail activity should continue to be encouraged where it is compatible with adjacent land uses, and sensitive natural and environmental features, and should be balanced by the need to maintain adequate public infrastructure and facilities, services and pedestrian and vehicular circulation patterns.

- The 2004 report further noted that the Economic Development component has increased in importance as the Township focuses on maintaining and revitalizing its commercial areas. In 1998, the Township created a Special Improvement District (SID) for Main Street, which includes the neighborhoods of Eagle Rock, Tory Corner, St. Mark's and the Valley. The adoption of the Downtown Redevelopment Plan includes a component to support the shopping at Tory Corner through the addition of parking and expanding the retail component along Main Street at the Battery Building. The 2004 Reexamination Report included recommendations to update and assist the existing shopping areas in the Township.
- The Master Plan states that in the past six years, West Orange has continued to proactively address its COAH (Council on Affordable Housing) obligation, and will monitor future changes that are made to State-determined method of addressing its affordable housing obligation.
- Additional non-residential uses will also contribute to the municipality's tax base. Some land use categories should be encouraged due to their growth potential and positive fiscal impacts. One such category is medical services, including offices, laboratories and supporting services. This sector will likely see continued growth as the area's (and nation's) population continues to age. West Orange also can take advantage of its proximity to Saint Barnabas Medical Center in Livingston, which is one of the state's largest and busiest hospitals.

Below is the zoning map and existing land use map from the 2010 Master Plan



ZONING ANALYSIS

The site is located in the B-2 district, and therefore the guidelines regulating the B-2 District prevail. That being the case the following variances is currently being sought.

D(1) Use Variance: 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.

D(6) Height Variance 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.

C (2) Bulk Variances

The application is for a use not permitted in the zone, the bulk regulations designed for that zone cannot be applicable to the intended use. For example, an application for a gasoline service station in a residential zone should not be held to the bulk requirements of the residential zone. Lot area requirements and front and side yard setbacks for a residence were not contemplated to be made applicable to a service station. A Board, in considering a “use” variance, must then consider the overall site design. In essence, the “c” variances are subsumed in the “d” variance

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.

1. Section 25-8.1a requires that no accessory use be located with any required front or side yard. There is currently parking in the front yard which is an existing non-conforming condition. Proposed Lot B will have a garden and walking path, which requires a variance
2. Section 25-8.2 requires that the required front, side and rear yard should be unobstructed there is currently a parking lot in the front yard. This is an existing no-conforming condition on Lot a. Lot B has a six foot fence, garden walkway and wall which requires a variance.
3. Section 8.4 a requires that walls and fences can not be more than 50% solid there is an existing 6 foot fence lot A and Lot b a new six foot fence is being proposed which requires a variance
4. Section 25-11.2 side yards of nonresidential building on a lot are contiguous to the boundary of any residential district shall have a minimum width of 75 feet. Lot B has a side yard setback of 51.3 feet and therefore requires a variance. And Lot B is required to have 210 parking spaces and 148 spaces are proposed and therefore a variance is required.
5. Section 25-12.2B.1 requires 264 parking spaces and there is currently 236 parking spaces and there are 98 spaces proposed on Lot A which requires a variance.
6. Section 25-12.4.a.2 requires access drive to off street parking areas may not be located within 5 feet of the side lot line. Variances are required for both lots from this code section
7. Section 25-15.3C.2.d permits a monument sign of 50 square feet and a maximum width of 6 feet. The proposed sign is 101.5 square feet in area and has a width of 14 feet therefore a variance is required.

STATUTORY CRITERIA

D(1) Use variance

The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. It permits a Zoning Board of Adjustment to grant a 'd' variance "in particular cases and for special reasons." 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 local master plan. This is the "positive criteria" of the statute.

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, 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?).

The benefit of providing senior living in an area and on a site that can accommodate the proposal is important and part of the Master Plan goals as noted above.

2. Identify the detrimental effect that will ensue from the grant of the variance. (what public problems could arise from the use?).

Any detriments are minimized due to the size, surrounding development pattern and location of the site, as can be seen on the master plan maps above.

3. Consider reducing the detrimental effect by imposing reasonable conditions on the use (how can the public problems be reduced?).

Any conditions to address impacts should be discussed at the subdivision and site plan stage, including additional landscaping.

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 benefits to providing an inherently beneficial use on a site that is particularly suited for the use outweigh any detriments.

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 municipality.

Given the size of the site, its surrounding land uses and the proposed building setbacks, there is substantial detriment to the public good. Further, given the improvements in landscaping, drainage and the proposed architecture, there are numerous benefits to the proposal, which outweigh any potential detriments.

There is no substantial impairment to the Township's Master Plan as noted above.

D(6) Height Variance

The Board has the power to grant "d(6)" variances to permit the height of a principal structure to exceed by 10 feet or 10% the maximum height permitted in the zoning district for a principal structure¹ 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. At present, there are two standards that apply to the determination of whether the positive criteria of a "d(6)" variance is satisfied.

The first standard is the traditional "d(1)" use variance standard enunciated in Medici v. BPR Co., 107 N.J. 1 (1987) and that standard would apply if the use or principal structure were prohibited in the zone. Simply stated, if the use or principal structure at issue is prohibited in the zone, the applicant would have to prove that some benefit to the general welfare would result from the proposed height of the principal structure and that the site is particularly suited to the location and height of the structure. Under these circumstances, the Board believes that our courts would treat the situation similar to how non-permitted cell towers are treated and require the Board to: (a) consider whether the placement of the structure at the proposed non-permitted height at the subject location is necessary in order that the structure achieve its permitted purpose; and (b) consider whether the same result could be achieved by erecting the structure in a location where the height of the structure could be lessened or by erecting the permitted structure at a lower height at the proposed location. See, Smart SMR v. Fair Lawn Board of Adjustment, 152 N.J. 309 (1998). Our courts have held that site suitability is to be determined both from the point of view of the applicant and the municipality. See, Northeast Towers, Inc. v. Zoning Board of Adjustment, 327 N.J. Super. 476, 497-498 (App. Div. 2000).

Regardless of the standard employed to determine the positive criteria of the "d(6)" height variance, the Board may not exercise its power to grant a "d(6)" height variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted... without a showing that such variance or other relief can 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." As with the positive criteria of a "d(6)" variance, there are two standards that apply to determination of the negative criteria of a "d(6)" variance, again, depending upon whether or not the use and principal structure at issue is permitted or not.

If the variance were for the height of a non-permitted principal structure, the standard enunciated in Medici would apply. Under that standard, the applicant must prove and the Board must find by an "enhanced quality of proof" that there will be no substantial impairment of the intent and purpose of the zoning ordinance and zone plan. Medici, at 21-22. Under that standard, the applicant would have to "reconcile" the height proposed with the ordinance's prohibition of that height in the zone at issue. Id. As the Medici court held, reconciliation "becomes

increasingly difficult when the governing body has been made aware of prior applications for the same variance but has declined to revise the zoning ordinance.” Id.

The proposed building is 2 ½ which is permitted in the zone and the proposed setbacks mitigate the height variance impact.

CONCLUSIONS

The Township has a right to grant the proposed variances based on the fact that the required statutory criteria have been met.