



COMMUNITY PLANNING
LAND DEVELOPMENT AND DESIGN
LANDSCAPE ARCHITECTURE

B U R G I S
ASSOCIATES, INC.

Principals:

Joseph H. Burgis PP, AICP

Edward Snieckus, Jr. PP, LLA, ASLA

David Novak PP, AICP

MEMORANDUM

To: Borough of Midland Park Zoning Board of Adjustment
Jessica Harmon, Secretary

From: David Novak PP, AICP

Subject: Nouvelle LLC
Site Plan Application, "d(1)" use and bulk variance relief
Block 55 Lot 8
714 Godwin Avenue

Date: October 10, 2022

BA#: 3890.02

Introduction

The applicant, Nouvelle LLC, has submitted an application seeking site plan approval as well as "d(1)" use and bulk variance relief for the development of a four-unit multifamily affordable housing building. The site, which is identified by municipal tax records as Block 55 Lot 8, is located at 714 Godwin Avenue in the R-1 Residential Zone District.

Our office is in receipt of and has reviewed the following documents:

1. Application and site plan checklist
2. Site plan prepared by Dykstra Walker and dated May 12, 2022 (last revised August 24, 2022).
3. Architectural plan prepared by Mistry Design, dated May 19, 2022 (last revised August 22, 2022).
4. Memorandum from Dykstra Walker, dated August 24, 2022.
5. Memorandum from Mistry Design, dated August 22, 2022.
6. Review memorandum from Rich Wostbrock & Associates, dated September 19, 2022.
7. Review memorandums from Police Chief, Fire Department, Fire Prevention, EMT, and Construction Official.

Property Description

The subject site is located in the westerly portion of the Borough, to the west of the intersection of Godwin Avenue and Midland Avenue. The site, which is bisected by Midland Park's shared municipal border with the Borough of Wyckoff, has a total area of 36,466 square feet (.837 acres). It fronts along Godwin Avenue for approximately 125 feet and has a depth of approximately 301 feet at its greatest.

The site is presently vacant, but was previously developed with a dwelling and detached garage. The remains of a paved driveway are located near the westerly front corner of the site. Two concrete patios and a paver patio also remain on site. The rear portion of the property consists of freshwater wetland areas.

Surrounding land uses consist predominantly of: single-family dwellings to the northwest; single-family dwellings to the east; office buildings to the southeast; and single-family dwellings to the southwest and west. See the aerial for an overview of the subject site and its surrounding environs.



Map 1: Aerial of Site (scale: 1" = 120')

Proposed Development

The applicant seeks site plan approval as well as “d(1)” use variance and bulk variance relief for the development of a four-unit multifamily affordable housing building. Two units are proposed on the first floor and two units are proposed on the second floor. All four units will have two-bedrooms, and will each contain a living room, dining room, kitchen, bathroom, and washer/dryer. A basement and attic are also proposed. The façade of the building will predominantly consist of vinyl siding, as well as cedar shakes siding, a veneer stone base, window shutters, shingle roof, and aluminum gutters and leaders.

In addition, the applicant proposes ten parking spaces including one ADA space. The northerly row of parking spaces will be comprised of permeable pavers. A dumpster area is located at the terminus of the parking area. In addition, a loading area is to be located to the westerly front of the proposed building. A four-foot wide sidewalk is proposed along the front of the site as well as along the front of the building. An ADA ramp is also proposed along the front of the building.

Master Plan

The following is noted regarding the Borough’s master planning documents.

2008 Land Use Plan Element

As per the Borough’s 2008 Land Use Plan, the subject site is located in the single-family residential land use category. As noted by the 2008 Plan, this land use category is designed to identify the locations where detached single-family residential development may occur at a maximum density of 3.5 units per acre. The majority of the Borough is located in this category.

2019 Reexamination Report of the Master Plan

The Borough adopted its most recent Reexamination Report of the Master Plan on March 18, 2019. The following relevant goals and policies are discussed by the Reexamination Report.

1. *Goal 1. To maintain and enhance existing areas of stability in the community and encourage a proper distribution of land uses by designating areas which have their own uniform development characteristics. A principal goal of this plan is to preserve and protect the residential character and moderate density of the community by restricting incompatible land uses from established residential areas, and limiting intensities of use to the level, and locations, prescribed herein*
Policy Statement. The Borough of Midland Park recognizes that one of its most significant attributes is its uniform land use arrangement, with limited intrusions of non-residential development in residential neighborhoods. The plan's land use recommendations are designed to protect and reinforce the prevailing detached single family residential development patterns, encourage multifamily development only in those areas specified in the plan and in the Borough's Housing Element and Fair Share Plan, preclude any introduction of incompatible non-residential uses in areas designated for residential use, and reinforce the intensities-of-use recommended in this plan.

2. Goal 2. To ensure that any prospective development and/or redevelopment is responsive to Midland Park's environmental features and can be accommodated by the existing infrastructure.

Policy Statement. The Borough seeks to encourage development which is sensitive to the community's physical characteristics and preserves the Borough's sensitive environmental elements. The Borough encourages development which preserves steeply sloped areas (defined to include any slope of minimally fifteen percent grade), protects wetlands, floodplains, and other areas prone to flooding, and retains vegetation (particularly trees of a caliper having minimally six inches, and clusters of trees). Additionally, the Borough takes cognizance of the fact that there are numerous sites in the municipality that are typified by extensive environmentally sensitive features and therefore may not be able to accommodate their full zoned development potential.

3. Goal 4. To provide a variety of housing types, densities and a balanced housing supply, in appropriate locations, to serve the Borough and region.

Policy Statement. The Borough policies encourage a varied housing stock and recognize that the State has specifically refined the housing issues to direct attention to the specific need for very-low-, low-, and moderate-income housing. Through its Housing Element and Fair Share Plan, the Borough seeks to continue its ongoing compliance with the affordable housing regulations set forth by the Council on Affordable Housing (COAH), the New Jersey Fair Housing Act (FHA), the Uniform Housing Affordability Controls (UHAC), and the applicable requirements of the Courts of the State of New Jersey.

4. Goal 7. To support the overall philosophy of the State Development and Redevelopment Plan (SDRP) as a means of providing growth management on a statewide basis while retaining the principles of home-rule, and to consider the goals of the State Strategic Plan should it be adopted.

Policy Statement. The Borough maintains that the general intent of the SDRP, to manage growth within the framework of an assessment of needs and infrastructure capabilities, and the SDRP's specific Metropolitan Planning Area designation for Midland Park, represents a reasonable approach to growth management.

Zoning

The site is located in the R-1 District, wherein the proposed use is not permitted. Compliance with the R-1 District standards are summarized in the following table.

Requirements	R-1 District	Existing	Proposed
Min. Lot Area (sf)	12,500	36,466.0	36,466.0
Min. Lot Width (ft)	100	125.5	125.5
Min. Lot Depth (ft)	125	304.0	304.0
Max. Height (ft/st)	32/2.5	N/A	(V) 34.3/3.5
Max. Building Coverage (%)	30	N/A	7.0
Max. Improved Coverage (%)	45	N/A	23.0
Min. Front Yard (ft)	25	N/A	25.5
Min. Side Yard (ft)	12	N/A	12.5
Min. Rear Yard (ft)	25	N/A	194.0

Variance and Design Waiver Relief

The applicant requires variance and design waiver relief from the following items.

“d(1)” Use Variance Relief

The applicant has requested variance relief pursuant to NJSA 40:55D-70d.(1) of the Municipal Land Use Law (MLUL) for a use or principal structure in a district restricted against such use or principal structure.

An applicant requesting a “d” variance must demonstrate that special reasons exist for the granting of the variance, and that the granting of such variance will further the purposes of the MLUL (positive criteria). In addition, the applicant must prove that there will be no substantial detriment to the public good and no substantial impairment to the intent of the Master Plan.

Housing developments which are entirely reserved for affordable households are considered to be an inherently beneficial use, which is defined by the MLUL as a use “which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare.” *Sica v. Wall Township Board of Adjustment (127 NJ 152, 1992)* provides guidance for how the Board should consider a use variance for an inherently beneficial use. Ultimately, the Sica Court held that the applicant’s burden of proof with respect to satisfying the negative criteria for an inherently beneficial use is significantly less than with respect to a non-inherently beneficial use, and that a balancing test must be employed.

This balancing test consists of four (4) parts:

1. The Board must first identify the public interest at stake;
2. Next, the Board must identify the detrimental effects that will ensue from the grant of the variance;
3. Third, the Board should determine whether any of the aforementioned detrimental effects can be reduced by imposing reasonable conditions on the use, and;
4. Finally, the Board must balance the positive and negative criteria and determine whether, on balance, the “d” variance can be granted without causing substantial detriment to the public good and substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

“c” Variance Relief

The applicant requires variance relief pursuant to NJSA 40:55D-70c.(1) and/or (2) of the MLUL for the items identified herein. The statute provides two approaches to (c) variance relief, commonly referred to as the ‘physical features’ test and the ‘public benefits’ test.

1. *Physical Features Test.* An applicant may be granted c(1) variance relief when it is demonstrated that the noncompliant condition is caused by: 1) an exceptional narrowness, shallowness, or shape of the property; 2) exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or; 3) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
2. *Public Benefits Test.* An applicant may be granted c(2) variance relief where it can prove the following: 1) that the granting of the variance will advance the intents and purposes of the Municipal Land Use Law; 2) that the benefits of granting the variance substantially outweigh any potential detriments. The benefits are required to be public benefits rather than a benefit that simply accrues to the property owner.

In addition to the above, the applicant must address the Negative Criteria of the statute. To meet the negative criteria, an applicant must demonstrate the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the master plan and zoning ordinance.

The following items require variance relief:

1. Garage. Variance relief is required from Section 34-4.3 of the Borough's zoning regulations which requires that in all residential districts, there shall be at least one enclosed garage for each dwelling unit erected. Four garages are therefore required whereas none are proposed.
2. Building Height. Variance relief is required from Section 34-4.5a. of the Borough's zoning regulations which establishes a maximum building height of 32 feet and 2.5 stories for the R-1 District, whereas the applicant has proposed a building height of 34.3 feet and 3.5 stories. Variance relief is required for both the linear height and the number of stories.
3. Curb Cut Width. Variance relief is required from Section 34-4.5h.1. of the Borough's zoning regulations which establishes a maximum curb cut width of 20 feet, whereas 48 feet is proposed.
4. Driveway Width. Variance relief is required from Section 34-4.5.h.2.(a) of the Borough's zoning regulations which establishes a maximum driveway width of 20 feet, whereas 24 feet is proposed.

Design Standards

The applicant requires waiver relief from Section 32-6.2.b.2. of the Borough's site plan review regulations, which establishes that off-street parking shall not be located in a required front yard.

As per NJSA 40:55D-51 of the MLUL, the board shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval, if the literal enforcement of one or more provisions is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

Planning Review

The following comments are offered:

Proposed Use and Affordable Housing

The following is noted regarding the proposed use and affordable housing:

1. Population Served. Testimony should be provided regarding the proposed use, including which population it will serve.
2. Affordability Controls. Information should be provided as to the proposed lengths of the affordability controls.
3. Income Distribution. Testimony should be provided as to the proposed income distributions of the units. Typically, at least fifty percent of the units are to be reserved as low-income units (of which thirteen percent are to be reserved as very-low income units), while the remainder may be moderate-income units.

4. Bedroom Distribution. The Uniform Housing Affordability Controls (UHAC) typically requires for all affordable developments that at least twenty percent of all low- and moderate-income units be comprised of three-bedroom units. This would technically require one three-bedroom unit for the development. Testimony should be provided as to whether a three-bedroom unit was contemplated, and how the applicant has typically handled this requirement in other municipalities and developments.

Parking, Loading, and Circulation

The following is noted regarding parking, loading, and circulation.

5. Proposed Bedroom Distribution/Number of Spaces. The "Parking Requirements" table on Sheet 1 should be updated to reflect that four two-bedroom units are proposed.
6. Parking Management. Testimony should be provided as to how parking will be managed on site, and whether the units will have assigned parking spaces.
7. Provision of EV/Make-Ready Spaces. The latest EV/Make-Ready legislation would not apply to this proposed development, as fewer than five units are proposed.
8. Loading. A loading space with dimensions of fourteen feet by forty space is proposed in the front yard. Testimony should be provided as to the purpose of this loading area, and whether it can be relocated to a less visible area or otherwise reduced in size. Should the loading space remain in the front yard area, we recommend that additional landscaping be provided to better screen it from Godwin Avenue.

Architectural Design and Layout

The following is noted regarding the proposed architectural design and layout:

9. Building Face. As presently designed, the side of the building faces Godwin Avenue. The applicant should discuss whether there had been any consideration to have the building facing Godwin Avenue with the parking located behind it. We note that as presently designed, the narrower portion of the dwelling faces Godwin Avenue.
10. Design. We find the overall design of the building to be satisfactory. The building features a variety of materials as well as articulation. Nevertheless, we recommend additional shrubs and/or low lying landscaping along the right façade to better buffer the proposed electrical and gas meters which would otherwise be facing Godwin Avenue.
11. Outdoor Amenity Space. The applicant has not proposed an outdoor amenity space. This should be discussed. We note that there may be an opportunity for such a space along either side of the dumpster area.

12. *Dumpster*. Due to its location at the end of the parking area, the dumpster will be fairly visible from Godwin Avenue. Testimony should be provided as to whether other locations were considered. It is recommended that the applicant consider relocating this dumpster to a less prominent location.

Borough of Wyckoff

As previously noted, a portion of the subject site is located in the Borough of Wyckoff. The applicant should discuss whether any approvals are necessary from the Borough and, if so, what the status of those approvals are.