



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: November 7, 2022

BA#: 3890.02

### Introduction

This memorandum is intended to provide an overview of the proposed site plan and architectural changes prepared by the applicant. For a full planning review, please see our prior memorandum dated October 10, 2022.

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 October 26, 2022).
3. Architectural plan prepared by Mistry Design, dated May 19, 2022 (last revised October 27, 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.

## Planning Review

The following is noted regarding the amended plans:

1. Turning Movement Templates. The applicant has provided turning movement templates for a front-loading garbage truck and a rear-loading garbage truck. These templates, and their relationship to the variances and design waivers requested for the driveway width, driveway opening, and front yard loading area, should be discussed.
2. Parking Count. The applicant has updated the parking table to indicate that four two-bedroom units are proposed. We find this satisfactory.
3. Proposed Moveable Picnic Tables. Proposed moveable picnic tables have been proposed between the building and the dumpster area. The applicant should discuss whether these tables will be accessible for those with disabilities.
4. Additional Landscaping. Pursuant to our request, the applicant has proposed supplemental landscaping including to the front of the proposed building as well as along its northerly side by the AC units .
5. Retaining Wall. The note pertaining to the removal of the retaining wall along the westerly property line has been removed. We defer to the Board engineer regarding this matter.
6. Building Height. The slope of the roof was reduced from 12/6 to 12/4, thus reducing the height from 34.3 feet to 31.3 feet. Thus, while a variance is still required for the proposed number of stories, no variance relief is necessary for the proposed linear height.
7. Front and Rear Elevations. As a result of the roof height alteration, the proposed dormers have been removed from the front and rear elevations.
8. Southerly Side Elevation. The applicant has provided additional architectural features to the southerly side elevation which faces Godwin Avenue. These include an additional roofline, decorative trim, and decorative brackets. The gas meters have also been moved from the left side of the southerly side elevation to its right side.

## 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 31.3 feet and 3.5 stories. Variance relief is required for 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.