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M E M O R A N D U M

Number: 1000.55.25

To: Brian Chewcaskie, Esq.

Date: July 31, 2025

Subject: Home for the Armenian Aged site plan
70 Main Street (Lots 2, 6 & 7 in Block 702)
Borough of Emerson, New Jersey

BACKGROUND

The applicant proposes to demolish an existing nursing home facility, located on the above noted site, and construct a new 2.5 story, 122 unit assisted living facility. A 120 bed facility was approved by the Board of Adjustment in 2012, but never constructed. The property is located between Main Street and Broad Street, east of Clinton Street, in the Borough of Emerson's R-7.5 Single Family Residential Zone. The following are comments in support of the application.

FINDINGS IN SUPPORT OF THE APPLICATION

1. Existing Conditions

The subject property is located between Main Street and Broad Street, with frontage also on Clinton Street. The site is currently developed with a nursing home facility. The 153,883 sq. ft. (3.532 ac) site has frontage of 341.62 ft. on Main Street, 590 ft. on Broad Street and 136.8 ft. on Clinton Street The site is relatively level, with a slight slope upward from Main Street.

2. Neighborhood Conditions

The surrounding neighborhood is primarily developed with single family residences on the northern side of Broad Street, the western side of Clinton Street and the southern side of Main Street, west of Union Street. The Emerson Middle and High School is located directly across the street on the southern side of Main Street.

3. Variances Requested

The R-7.5 Zone permits nursing homes as a conditional use; not all conditional use standards are met, and a (d)3, conditional use variance would be required. In the event that the Board does not consider the proposed assisted living facility to be a nursing home, a (d)1 use variance would be required.

a. Maximum building height: the proposed building will have a height of 40.5 ft. on Broad Street and 43.5 ft. on Main Street, where a maximum building height of 40 ft. is allowed.

b. Maximum Floor Area Ratio: the building will have an F.A.R. of 78.56%, where a maximum F.A.R. of 50% is allowed.

4. Special Reasons: Conditional Use Variance

Section 40:55D-70(d) of the Municipal Land Use Law allows variances to be granted “in particular cases and for special reasons”, further, “no variances or other relief may be granted... unless such variances or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.”

The Court, in Coventry Square v. Westwood 138 NJ 285 (1994), held however that a d(3) variance where a conditional use does not meet all applicable standards is to be the subject of a modified review. A board must focus on the deviations from those standards, not whether the proposed use is compatible with other uses in the zone. The negative criteria test must focus on the impact on the public good caused by deviation from the zoning standards, not the impairment of the zoning plan itself.

The Borough Zoning Ordinance defines "nursing home" as "any premises meeting the standards of the New Jersey Department of Human Services to operate as a nursing home." The DHS licenses assisted living facilities under the same process as nursing homes, and the proposed assisted living development would therefore meet the Borough definition.

Section 40:55D-4 of the Municipal Land Use Law was amended in 2009 to define inherently beneficial to mean "a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure." The New Jersey courts, in a number of cases, have determined that nursing homes, similar to hospitals, were inherently beneficial uses which serve the public good and promote the general welfare. This has been determined to presumptively provide special reasons and satisfy the positive criteria for the grant of variances. As a well recognized inherently beneficial use, the positive criterion for each variance is satisfied. In analyzing the negative criteria, the Board must utilize the 4 step process required by the Sica Case.

a. Identify the public interest at stake.

The existing nursing home has been located on the site since 1938 and has increased over the years from 12 beds to the current 86 bed facility. The current building is beginning to show signs of deterioration and is not ADA compliant and the construction of a new, modern facility would benefit residents of Emerson, Bergen County and the rest of the State of New Jersey.

b. Identify the detrimental effect that will ensue from the granting of the variance.

1. The increase in the number of occupants and the relocation of driveways could produce additional traffic in the vicinity.

2. The proposed development, and increased F.A.R. could have an impact on drainage conditions both on and off site.

3. The increased building height could block light, air and open space for adjacent properties.

c. Need for reasonable conditions

If it's determined that they are needed, the Board of Adjustment could require additional drainage improvements on the site or modifications to the proposed parking and driveway locations.

d. Weigh positive and negative criteria to determine when, on balance, the grant of the variance would cause a substantial detriment to the public good.

1. The court in Randolph Town Center v. Township of Randolph (1999) stated that where an F.A.R. variance was required, the board must focus on whether the site could accommodate a floor area larger than what was allowed, not whether the proposed use was compatible with other uses in the zone or that the site was particularly suited for more intensive development. The engineer has provided testimony that all drainage can be contained on site and there will be no impact on adjacent properties. The proposed building coverage is less than allowed by the Ordinance and the amount of open space provided exceeds the Ordinance requirement.

2. The Grasso v. Borough of Spring Lake Heights case (2004) found that special reasons exist for a height variance if a taller structure than what is permitted by ordinance would nonetheless be consistent with the surrounding neighborhood. The proposed building meets the height limitation in terms of stories and exceeds the limitation as measured in feet by 6 inches on Broad Street and 3.5 ft. on Main Street. The northern side of Broad Street is residentially developed and the minor deviation would not have any impact on light, air or open space.

3. The buildings have been designed to give a more residential appearance, with lower heights, to better fit in with the residential neighborhood that surrounds the property and to mitigate any esthetic impacts.

CONCLUSIONS

The proposal meets both the positive and negative criteria tests. For the reasons stated above, the grant of the requested variances will advance the purposes of zoning and will not be substantially detrimental to the public good nor will they substantially impair the intent and purpose of the zoning ordinance and master plan.

David Spatz

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