Hawthorne, NJ 07506-1749

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Pequannock Township, NJ – Conditional Use Variance and Bulk Variances:

Professional Planner's Report and Outline for Testimony

Expert Witness Qualifications:

Experience

Education

Expert Testimony

Property Description:

- 1. Location: 126 Newark Pompton Turnpike, Pompton Plains, NJ.
- 2. Block 4103, Lots 18
- 3. Zoning Classification: Commercial C 1
- 4. Existing Use Office
- 5. Proposed Use Residential Multi Family

Surrounding Development Pattern:

1. Property is bounded on the south by the Newark Pompton Turnpike (C-1 Zone). To the east by Greenwood Avenue (Single Family Medium Density)

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To the north Township property and abandoned railroad ROW to the east.

2. Site (Property) is an older small vacant office building on a small lot that is in need of rehabilitation.

Development Proposal:

The basis and framework of my planning testimony for the D-3 conditional use variance and associated bulk variances are based the facts and professional conclusions of the testimony presented. I will add my professional observations, knowledge, opinions, case law and the MLUL requirements to form my professional conclusions for this Board to consider this Application.

<u>Variances Requested:</u> The Zoning Chart below provides the existing conditions as they relate to the C-1 Zone and the Conditional Use Standards under the conditionally permitted Multi-Family Use.

Zoning Chart:

		Conditional Use	Proposed/Existing*	Compliance
Standard	C-1 Zone	Multi Family		
Maximum Density	N/A	12 units/acre	12.55 units	variance
Min. Lot Size	4,000 SF	2.5 acres	.239 acres * 10,309 SF	Variance*
Min. Lot Width			65.16 Ft*	Variance*
Newark/Pompton	40 Ft	200 Ft		
Min. Lot Width			97.89 Ft*	Variance*
Greenwood Avenue	40 Ft	200 Ft		
Min. Front Yard Setback	25 Ft	50 Ft	13.1 Ft *	Variance*
Min. Side Yard Setback	3 Ft	35 Ft	2.5 Ft*	Variance*
	25% or 16.29			
Comb. Side Yard	Ft	N/A	10.4 Ft*	Variance*

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Min. Rear yard Setback				
(not including parking				
areas or driveways)	35 Ft	35 Ft	47.31 Ft*	Variance*
Min. Buffer Side/Rear			Side 0 Ft/10+ Ft *	Variance*
Yards	N/A	10Ft.	Rear 0 Ft. *	
Min. Open Space 25				
SF/Unit additional to	•			
Setbacks	N/A	75 SF	Greater than 75 SF	Complies
Max Building Coverage	30%	20%	16.02% or 1,688 SF	Complies
Max. Impervious			5,616 SF or 54.01	Complies
Coverage	90%	70%	5,770 SF or 55.49%	
		Over 650 SF Two	7 Spaces	Complies
Parking Requirements		Spaces or 6 Spaces		
Max. Building Height	30 Ft	35 Ft and 2 ½ Stories	? Ft 2 Stories	Complies
Max # of Units per				
Building	N/A	8 Units	3 Units	Complies
Min. # of Units per				
Building	N/A	4 Units	3 Units	Variance
All Exterior				Complies
Walls/Windows	N/A	N/A	Yes	
Min. Distance Between				
Buildings	N/A	50 Ft.	N/A	Complies

Analysis: A conditional use variance pursuant to NJSA 40:55D-70d-3 is required for the deviations from the requirements under the conditional use criteria for Multifamily, residential uses in the C-1 Zone. Bulk variance relief pursuant to NJSA 40:55D-70c is also required. As set forth on the Zoning Chart above and on the Site Plan, the following variances are a result of non-compliance with the Conditional Use standards, all of which except for the proposed density and the proposed number of units per building are pre-existing, non-conformities:

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- 1. Proposed Density;
- 2. Minimum Lot Size;
- 3. Minimum Lot Width from Turnpike and Greenwood);
- 4. Setbacks including front yard, side yard, combined side yards and rear yard;
- 5. Side yard buffers;
- 6. Min. # of Units per building.

Photos of the Site and Area:

Photo 1 Aerial:

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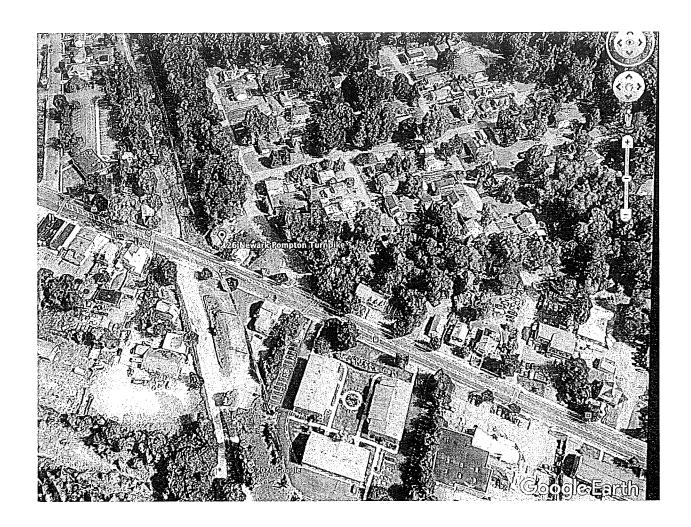


Photo 2 east from the Newark Pompton Turnpike:

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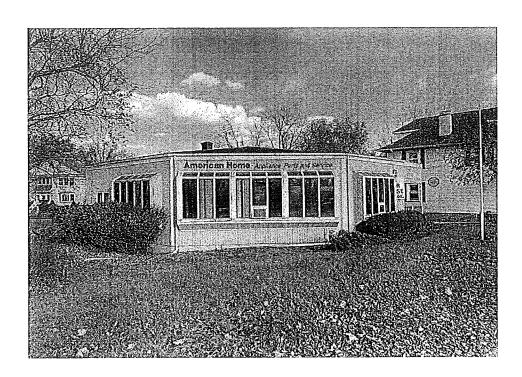
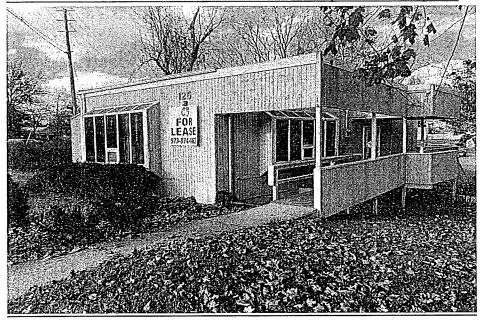


Photo 3 north from the Newark Pompton Turnpike



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Photo 4 west from the existing parking lot

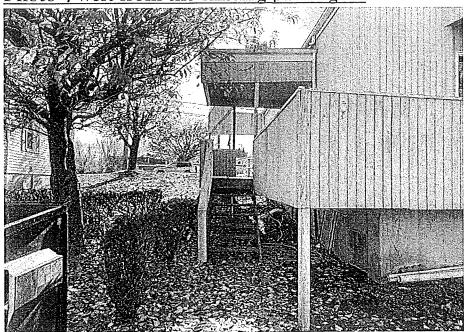
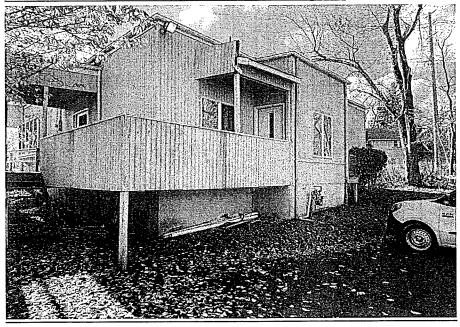


Photo 5 northwest from the parking lot



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Master Plan Consistency with the Proposal:

Land Use Element Goals per the Township of Pequannock Master Plan:

- 1. Maintain the character of the Township in established neighborhoods.
- 2. Promote growth in appropriate areas that meet current and future land use trends. Specifically, 2.b. Expand permitted uses in the commercial districts consistent with the intent of those zones.
- 3. Promote land uses consistent with the Township of Pequannock's historic patterns. Specifically, ensure nonresidential land uses are compatible with surrounding neighborhoods and require buffers to mitigate impacts.
- 4. Transition zones with under-utilized land uses to districts more aligned with the Township of Pequannock's development goals.

Economic Development Element Goals

1. (3.) Improve the visual conditions of the Newark Pompton Turnpike Commercial Districts.

Housing Element:

"While the number of housing units in the Township of Pequannock have increased over time, a changing population has resulted in a new housing demand. The younger adults are waiting to marry and have kids

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and the older population looking to age in place have formed a new housing demand profile which includes a higher proportion of rental units, and units..." See Page 24 Master Plan.

Application of Master Plan to Proposed Application: The Master Plan is in support of this application by using an existing oddly shaped lot and currently unsightly building on the Newark Pompton Turnpike transforming the building along the street and blending the architecture into the adjacent residential neighbor. The apartments provide opportunities for housing, which is strongly encouraged in the Master Plan in support of Economic Development on a scale that does not change the character of Pequannock with a large-scale housing development. Furthermore, the Applicant can offer testimony that leasing efforts geared towards commercial or "business" uses have not been viable, and the market trends clearly favor residential, as opposed to commercial, tenancies, at least in this particular area of the Township. The location of this lot on the Newark Pompton Turnpike is more conducive and suitable for a smaller scale multi-family, residential use rather than a commercial use. In fact, the nature of the lot and the building are very suitable to the proposed small scale multifamily use, and the deviations from the conditional use standards do not otherwise render the property not suitable.

Conditional Use Variance(s) as required under NJSA 40:55D-70D-3:

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The case law applicable to this application and request before the Board is Coventry Square v. Westwood Zoning Board of Adjustment, 136 N.J. 30 (1994). The Court in Coventry Square, at page 347, states that a Board in reviewing conditional use variance relief must be "...persuaded that the non-compliance with conditions does not affect the suitability of the site for the conditional use. A conditional use variance applicant must show that the site will accommodate the problems associated with the use, even though the proposal does not comply with (all) of the conditions the ordinance established to address those problems."

Suitability: The Master Plan and Zoning Ordinance recognize the Newark Pompton Turnpike area as an area of special concern. This property is a transition area between the sustainable commercial area to the immediate west of the subject property, and the single-family neighborhood abutting the Turnpike which generally lies towards the east of the property. The property is constrained by topography and environmental conditions. The existing development footprint and the building are in need of rehabilitation. Moreover, the lot and the building ares particularly suited for the conversion to a 3-unit multi-family residential building as proposed by the Applicant. There is available area for parking. The Master Plan clearly states that there is a need for this housing type. The size and scale of the proposal fits and complements the neighborhood with minimal, if any, actual impact or detriment. This proposal to satisfy clear goals of the Master Plan is a far better alternative to a larger multifamily residential housing development with many units. Furthermore, this application and proposal will maintain the character of

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the Turnpike area, and the adjacent single-family neighborhood lying to the east of the property.

<u>Positive Criteria:</u> The positive criteria are based on the MLUL specifically under NJSA 40:55D-2. Purposes of the Act. These purposes can also be described as the reasons and the basis for sound planning and zoning.

Section a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which promotes the public health, safety, morals, and general welfare; The proposed location and property on the Turnpike and its immediate proximity to sustainable commercial uses provides an opportunity to permit a small-scale, multi-family residential development promoting the general welfare of the of the citizens of Pequannock.

Section e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions, and preservation of the environment; The proposed location and property on the Turnpike certainly effectuates this purpose of zoning because it is small in scale (only consisting of three units), will not generate an intense use or intense traffic emanating from the property in the manner a commercial building might, and is consistent and properly located when the neighboring residential neighborhood to the east is considered. This is ultimately consistent with the Township's Master Plan, specifically its Housing Element.

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Section g. To provide sufficient space in appropriate locations for a variety of uses... The multifamily, residential use is conditionally permitted and is consistent with the Housing goals of the Township's Master Plan and Housing Element. Note that the bulk variances associated with this application can be considered under this particular MLUL purpose of zoning.

Section i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement; the existing building and site are clearly in need of rehabilitation. The building and lot are underutilized due to economic conditions negatively impacting the commercial market. The renovated building will provide a positive impact on the neighborhood. The Applicant is a professional builder committed to creating a visually pleasing and attractive rehabilitated structure with the necessary appurtenant features, such as landscaping, lighting and parking.

Negative Criteria: Any variance granted could have some impact on the Master Plan and Zoning Ordinance. However, it must be noted that this application rehabs and renovates an existing property on a unique lot encumbered by existing constraining conditions. Not all the standards can be met, however we believe that the building, site and landscape improvement will mitigate, if not eliminate, any negative impacts. Furthermore, it is my opinion as an expert in the field of professional land use planning that the application and the benefits associated with

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this application as set forth above strongly outweigh any possible detriments. In fact, I opine that there may not be any true detriment properly associated with this application and proposal, especially when one considers the market, the surrounding uses and the need for housing in this area of the Township. Furthermore, it is my opinion, based not only on my education but also on my experience as a professional planner for various municipalities in the State, that housing drives commercial enterprise in a township like Pequannock.

In summary,

A low intensity transitional use to a residential, multi-family apartment building meets and satisfies a present local need for housing. Furthermore, the site is particularly suited to the proposed residential, multi-family use;

The location and the site elements will enhance the Newark Turnpike corridor from a visual perspective, and will also serve to benefit both the adjacent commercial property to the west of the site, and also the residential neighborhood to the immediate east of the site;

Proper design of the site elements eliminates or diminishes any negative impacts, through the granting of the required variance relief;

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The renovated building with architectural features will complement and enhance the neighborhood, will be consistent with the Master Plan, and nicely blends and transitions into the residential neighborhood to the east of the site, diminishing or eliminating any negative impacts.

The multifamily use can be approved with the variances requested without any substantial impact on the Master Plan, Ordinance and Neighborhood. In fact, the benefits that will result from the approval of this application are significant, and needed in the municipality.

Bulk Variances Requested: Listed above.

NJSA 40:55D - 70 - c - 1 & 2: c(1) An applicant requesting a c(1) variance must demonstrate where (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 the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of the MLUL would result in peculiar and exceptional practical difficulties, or exceptional and undue hardship upon, the developer of such property.

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- 1. The variances requested for the buffers, front, side and rear yard setbacks are existing and cannot be changed to the lot configuration and the topography (c-1a and b)
- c(2) The applicant requesting a variances pursuant to N.J.S.A. 40:55D-70(c)2, commonly known as a "(c)2" variance. An applicant requesting a c(2) variance must 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; and 3) address the negative criteria. Pursuant to court decisions concerning the c(2) variance, the applicant must show how the proposal represents a better zoning alternative for the property than the existing requirements of the district. In addressing this issue, the applicant must show how the deviation would benefit the surrounding neighborhood or community as a whole.

The Purposes of Zoning under NJSA 40:55D-2 and the Master Plan provides the basis to address the proofs to be considered by the Board. Specifically, a., g. and i. as previously testified too under the Use Variance testimony promoting appropriate development of properties, visual improvements and good civic design.

In my professional opinion, the benefits or positive criteria presented for this project *significantly* outweigh any negative impacts. Furthermore, it is my professional opinion that there really are not any true detriments or negative impacts associated with the variance relief

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required for this application. In fact, the property will be much improved if the proposed, multifamily residential use is approved and constructed.

<u>Summary:</u> The granting of the d3 conditional use variance and bulk variances will not have a substantial detriment on the public good; will advance the general welfare and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. In fact, the benefits to zoning as articulated herein clearly outweigh any detriments, if any, that may exist in connection with this application. Again, for summary purposes, these benefits include:

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Respectfully Submitted,

David Troast, PP Plan2 Consultants