



ORAD-R0005

February 16, 2024  
(via email)

Borough of Oradell Zoning Board  
c/o Chairman Marvin Michelman and Members of the Zoning Board  
Borough of Oradell  
355 Kinderkamack Road  
Oradell, New Jersey 07649

**Re: Bergen County United Way  
Block 223, Lot 5  
Genther Avenue  
R-4 (One-Family Residential) Zone District  
Preliminary and Final Site Plan; Floor Area Ratio (FAR) "D(4)" and Bulk Variance  
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Dear Chairman Michelman and Members of the Zoning Board of Adjustment,

We have reviewed the following materials submitted in connection to the above referenced Application:

- Zoning Review Denial letter prepared by Stephen H. Depken, Borough of Oradell, Construction Official/Zoning Officer, consisting of three (3) pages, dated October 27, 2023.
- Transmittal letter prepared by Bruce E. Whitaker of McDonnell & Whitaker, LLC., consisting of two (2) pages, dated December 4, 2023.
- Development Checklist Appendix A, for Bergen County United Way/Madeline Housing, consisting of two (2) pages, undated.
- Preliminary and Final Site Plan Checklist Form 5 and Form 7, for Bergen County United Way/Madeline Housing, consisting of five (5) pages, undated.
- Drainage Calculation for Bergen County United Way/Madeline Housing Partners, Genther Avenue, Block 223, Lot 5, consisting of eight (8) pages, dated August 8, 2023.
- Soil Moving Application for Genther Avenue, Block 223, Lot 5, signed by the Owner, consisting of one (1) page, undated.
- Soil Moving Application Checklist, for Bergen County United Way, Genther Avenue, Block 223, Lot 5, consisting of three pages, undated.
- Affidavit of Ownership and Applicant signed by the applicant and owner, consisting of two (2) pages, dated November 12, 2023.

Le: Gabrielle Ferrezza

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- Site plan for Genther Avenue, Block 223, Lot 5, prepared by David A. Hals, PE, LS, PP, of Schwanewede Hals & Vince, Engineering – Land Surveying – Planning, consisting of six (6) sheets, dated September 14, 2023.
- Architectural Plans for Genther Avenue, prepared by Raymond J. Virgona, R.A., of Virgona + Virgona Architects and Planners, consisting of two (2) sheets, dated October 13, 2023.

We offer the following comments on the application and related materials.

### **Subject Property and Area**

The subject property is comprised of Block 223, Lot 5, and consists of 19,943 SF (0.458 acres). Lot 5 is located on the eastern side of Genther Avenue, south of Ridgewood Avenue and the northern end of Brookside Avenue. The site is located within the R-4 (One-Family Residential) Zone District.

Lot 5 is an irregularly shaped lot that is currently vacant; however, there appears to be an existing chain link fence throughout a portion of the middle of the property. A 30-foot storm drain easement extends through the subject property from the southeastern corner to the southwestern corner.

The site is mainly surrounded by residential properties located within the R-4 Zone District. Adjacent to the subject property's northeastern corner is a vacant lot in the R-4 Zone District. Additionally, the Conrail (Formerly Erie-Lackawanna) New Jersey and New York Railroad Company Line are located to the east of the subject property.

### **Proposal**

The applicant is seeking approval to construct a two-story building with special needs housing. It appears that the first floor would contain a four-bedroom group home, and the second floor would contain one 1-bedroom unit and one 2-bedroom unit. It is unclear whether the units on the second floor are part of the group home. The total building footprint approximates 3,630 SF and a gross floor area of 5,647 SF.

The proposed first floor would include a community room and a four-bedroom group home that would consist of 2.5 baths, two (2) office spaces, living/dining/kitchen space, a den, and an outdoor patio at the back of the building. The second floor would include one 1-bedroom and one 2-bedroom unit. Each unit on the second floor would contain a full bath, washer and dryer

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space, and a living area. The submitted architectural plans do not indicate kitchen space in the second-floor units.

The applicant proposes a parking area of approximately 3,200 SF on the southern side of the property, within the 30-foot storm drain easement. Eight (8) off-street parking spaces are proposed, one (1) of which will be barrier-free. The parking area can be accessed by a 20-foot-wide driveway connecting to Genther Avenue. A five (5) foot wide sidewalk is proposed to connect Genther Avenue and the proposed parking area. A generator and A/C Unit are proposed along the northern side of the property, approximately 28 feet from Genther Avenue. Twenty (20) trees are proposed for removal, and four (4) replacement trees are proposed.

An aerial image with an approximate outline of the subject property is shown below.

**NearMap Aerial Imagery - Approximate Outline of Subject Property (Block 223, Lot 5)**



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### **Housing Element and Fair Share Plan**

The subject property is included in the Borough's 2022 Amendment to the Housing Element and Fair Share Plan. The Borough had agreed to donate Block 223, Lot 5, to Bergen County United Way to construct a four-bedroom group home and one 2-bedroom apartment. The group home and apartment would be occupied by adults with developmental disabilities and said units would qualify as affordable housing units.

### **Master Plan**

Following are some goals from the Borough's 2018 Land Use and Central Business District Elements of the Master Plan that pertain to the application. As previously described, the site is included in the 2022 Housing Plan Amendment, and the Housing Plan is an element of the Master Plan. The applicant should provide testimony on the conformance of the application to these goals and the Borough's Master Plan.

- Borough – General Goals and Objective No. 11 in Section 2.1 of the Land Use Element states, *"To encourage senior citizen community housing, special needs housing and assisted living housing construction."*
- Borough-Specific Goal No. 1 in Section 2.2 of the Land Use Element states, *"To maintain and enhance existing areas of stability; to 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 existing density of the community by restricting incompatible land uses and building heights from established residential areas, and limiting intensities of use to the levels, and locations, prescribed herein."*
- Borough-Specific Goal No. 3 in Section 2.2 of the Land Use Element states, *"To provide a variety of residential housing types and densities and a balanced housing supply, in appropriate locations, to serve the Borough and region."*

### **Zoning Analysis**

The following uses are permitted within the R-4 Zone District:

- All uses permitted in the R-1 Zone which include:
  - Permitted Uses:
    - One-family dwelling.

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- Community residences specifically permitted by state statute(s).
- Family day-care homes specifically permitted by state statute(s).
- Accessory Uses:
  - Home office use, meaning an office activity carried on for gain by a resident in a dwelling unit, shall be a permitted accessory use in residential zone districts, provided that specific requirements are met.
  - Private garages, limited to the storage of not more than three vehicles, of which one may be a commercial vehicle.
  - Swimming pools and ponds
  - Fences.
  - Tennis Courts.
- All other uses not set forth above are prohibited in this zone.

As indicated by the Zoning Permit Review dated October 27, 2023, the proposed use is permitted in the R-4 Zone District. Community residences are permitted in the zone district and also are permitted pursuant to N.J.S.A. 40:55D-66.1.

### **Zoning Analysis – R-4 Zone District**

#### **1. Bulk and Area Requirements**

Pursuant to the Borough's Zoning Ordinance, the proposal's compliance with the bulk and yard standards of the R-4 Zone District is as follows:

<b>§240-6.5(D)(3) - Bulk and Yard Requirements – R-4 Zone District</b>				
<b>Description</b>	<b>Permitted</b>	<b>Existing</b>	<b>Proposed</b>	<b>Conforming</b>
§240-6.5(D)(3)(a)(1) – Minimum Lot Area	7,500 SF	19,943 SF	No Change	Yes
§240-6.5(D)(3)(a)(2) – Minimum Lot Width	75 FT	248.56 FT	No Change	Yes
§240-6.5(D)(3)(b)(1)(a) – Minimum Front Yard Setback	25 FT	N/A	25.6 FT	Yes
§240-6.5(D)(3)(b)(1)(c) – Minimum Side Yard Setback (Northerly Side)	10 FT	N/A	35.0 FT	Yes



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<b>§240-6.5(D)(3) - Bulk and Yard Requirements – R-4 Zone District</b>				
<b>Description</b>	<b>Permitted</b>	<b>Existing</b>	<b>Proposed</b>	<b>Conforming</b>
§240-6.5(D)(3)(b)(1)(c) – Minimum Side Yard Setback (Southerly Side)	10 FT	N/A	45.0 FT	Yes
§240-6.5(D)(3)(b)(1)(c) – Minimum Side Yard Setback (Both Sides)	109.3 FT*	N/A	<b>80 FT (V)</b>	<b>No (V)</b>
§240-6.5(D)(3)(b)(1)(b) – Minimum Rear Yard Setback	25 FT or 25% of property depth	N/A	25.4 FT	Yes
§240-6.5(D)(3)(c) – Maximum Building Coverage	25%	N/A	20.2%	Yes
§240-6.5(D)(3)(d) – Maximum Lot Coverage	40%	N/A	<b>41.6% (V)</b>	<b>No (V)</b>
§240-6.5(D)(3)(e) – Maximum Floor Area Ratio (FAR)	0.20 (3,938 SF**)	N/A	<b>0.28 (5,647 SF) ("D(4)")</b>	<b>No ("D(4)")</b>
§240-6.5(D)(3)(f) – Maximum Building Height	34 FT	N/A	< 34 FT as shown on the plans	Yes
§240-6.5(D)(3)(g) – Maximum Side Yard Wall Length	40 FT	N/A	14 FT	Yes

V = Variance Required

"D(4)" = Floor Area Ratio (FAR) Variance Required

\*Minimum Combined Side Yard Setback<sup>1</sup>

- Lot Width = 248.56 FT
- Minimum Lot Frontage 75 + 5 FT = 80 FT
- Minimum Combined Side Yard Setback before additional requirement = 25 FT
- Calculation:
  - 248.56 FT – 80 FT = 168.56 FT
  - 168.56 × 50% = 84.28 FT

<sup>1</sup> For every foot or part thereof for which the front yard lot width line is five feet above the required front lot width in a lot in a residential zone, 50% of that additional front yard lot width shall be added to the lot's total both side yard setback requirements of that zone and the other 50% may be used for the added building width. If the lot has only one side yard, the additional side yard footage shall be added to the single side yard setback requirement. In addition, one-story open front porches that conform to the front yard setback may extend into the side yards along the entire front of the building but limited to each of the building's two side walls.

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- $84.28 + 25 \text{ FT} = 109.28 \text{ FT}$ , rounded to **109.30 FT**

\*\*Max FAR = 35% of first 7,500 SF, 17.5% for area between 7,500 SF to 15,000 SF

- Calculation:
  - $35\% \times 7,500 \text{ SF} = 2,625 \text{ SF}$
  - $17.5\% \times 7,500 \text{ SF} = 1,312.5 \text{ SF}$
  - Total =  $2,625 \text{ SF} + 1,312.5 \text{ SF} = 3,937.5 \text{ SF}$ , rounded to **3,938 SF**.

### Required Variances

The application includes both "c" and "d" variances. The following "d" variance is required:

1. Variance pursuant to N.J.S.A.:55D-70d(4): A maximum FAR of 0.20 (3,937.5 SF) is permitted, whereas a FAR of 0.28 (5,647 SF) is provided. **Therefore, a "d(4)" variance is required.**

**We note that the FAR indicated above was provided on Sheet 1 of the site plan. However, Sheet 1 of the architectural plan provides a FAR of 0.30 (5,930 SF). The applicant should reconcile the difference between these two FAR calculations. If the actual FAR is 0.30 (5,930 SF), the extent of non-conformity resulting in the need for a "d(4)" variance would be greater.**

The application requires the following "c" variances:

1. §240-6.5(D)(3)(b)(1)(c) – Minimum Side Yard Setback (Both Sides). A minimum combined side yard setback of 109.3 feet is required, whereas a combined side yard setback of 80 feet is proposed. **Therefore, a "c" variance is required.**
2. §240-6.5(D)(3)(d) – Maximum Lot Coverage. A maximum lot coverage of 40% is permitted, whereas a lot coverage of 41.6% is provided. **Therefore, a "c" variance is required.**

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### **Zoning Analysis – Variance Considerations**

#### **Floor Area Ratio (FAR Variance)**

1. The d(4) variance is a request for a use variance to exceed the permitted Floor Area Ratio (FAR). One case by which a d(4) use variance is evaluated is Coventry Square v. Westwood Zoning Board of Adjustment. That case, rather than the case of Medici v. BPR Co., is used because it contemplates permitted uses rather than prohibited uses.
2. The applicant must demonstrate that there are special reasons for the granting of the use variance. Typically, special reasons advance a purpose of zoning (MLUL § 40:55D-2, Purposes of the act). The applicants in a d(4) FAR case must also show that the site will accommodate the problems associated with a FAR that is larger than what is permitted by the ordinance.
3. The applicant must also satisfy the Negative Criteria, as follows:
  - The proposal will not create a "substantial detriment to the public good;" and
  - The proposal will not create a "substantial detriment to the zone plan and zoning ordinance."

#### **Bulk Variances**

Bulk variances are classified as c(1) or c(2) variances. For c(1) variances, the Municipal Land Use Law (MLUL) permits granting a variance from the zoning ordinance where:

- a. by reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- b. by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property;
- 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 the zoning ordinance would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.

The focus of the c(1) variance is on the physical characteristics of the land that create a hardship on the owner. In contrast, a c(2) variance focuses on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the neighborhood and community. For the c(2) variance, the Municipal Land Use Law permits granting a variance from the zoning ordinance where the purposes of the MLUL "would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially



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outweigh any detriment." The c(2) variance should not be granted when only the owner or applicant's purposes would be advanced. The c(2) variance should actually benefit the community because it provides a better zoning alternative for the property. A c(2) variance should promote flexibility and creativity in site design and allow for deviations from the zoning ordinance in cases where a more desirable result can be achieved through a relaxation of the bulk requirements.

The applicant must also satisfy both components of the negative criteria for bulk variance applications:

- a. The proposal will not create a "substantial detriment to the public good;" and
- b. The proposal will not create a "substantial detriment to the zone plan and zoning ordinance."

For the first prong of the negative criteria, no substantial detriment to the public good, the focus is on the impact to the neighborhood or surrounding area. For the second prong of the negative criteria, the focus is on the impact to the Borough's zone district and master planning documents.

### **Off-Street Parking Requirements**

1. The application's conformance with the off-street parking requirements is outlined below. We note that the R-4 Zone District and § 240-6.6 of the Borough Zoning Ordinance do not include minimum parking requirements for the proposed residential uses. The following table identifies the minimum-off-street parking spaces required pursuant to § 5:21-4.14.f. of the New Jersey Residential Site Improvement Standards (RSIS) for the residential units. The applicant meets the parking requirement of seven (7) spaces.

<b>§ 5:21-4.14.f. (RSIS) – Off-Street Parking Requirements</b>				
<b>Description</b>	<b>Required**</b>	<b>Existing</b>	<b>Proposed</b>	<b>Conforming</b>
<b>Housing Unit Type (No. of Vehicle Spaces)</b>				
2.5 spaces per 4-bedroom unit	3 spaces	N/A	4 spaces	Yes
<b>Garden Apartment (No. of Vehicle Spaces)</b>				
1.8 spaces per 1-bedroom unit	2 spaces	N/A	4 spaces	Yes
2.0 spaces per 2-bedroom unit	2 spaces			
<b>Total</b>	<b>7 spaces</b>	<b>N/A</b>	<b>8 spaces</b>	<b>Yes</b>

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\*\*Required Parking Calculations:

- 1 - Four Bedroom Group Home Unit – 2.5 spaces per four-bedroom unit: 1 four-bedroom units  $\times$  2.5 = 2.5 spaces, rounded to 3 spaces
- 1 – One Bedroom Unit – 1.8 Spaces per one-bedroom unit: 1 one-bedroom units  $\times$  1.8 = 1.8 spaces, rounded to 2 spaces.
- 1 – Two Bedroom Unit – 2.0 Spaces per two-bedroom unit: 1 two-bedroom units  $\times$  2 = 2.0 spaces.
- **Total = 3 + 2 + 2 = 7 spaces**

**General Planning Comments**

1. The applicant should be prepared to provide testimony on the following items:
  - a. The calculation breakdown of building height and its conformance with the Borough codes.
  - b. The relationship between the units on the first and second level and whether the units on the second levels are part of the group home or are independent units. The applicant should confirm whether the second-level units will each contain kitchens. The architectural plans note a "living" area but do not specifically identify kitchen space. The plans show what appears to be a kitchen island in both units, but it is not labeled as a kitchen.
  - c. The applicant should confirm whether all units will be for the special needs population.
  - d. The site and architectural plans presently show different layouts for the proposed parking area and dumpster locations. Testimony must be provided to clarify this discrepancy and the plans should be revised accordingly. Testimony should also be provided indicating that there are no turning conflicts for the proposed parking spaces and dumpster area.
  - e. The Parking Table on Sheet 2 of the architectural plans indicates that two (2) spaces are proposed for "employees." The applicant should confirm the number of employees anticipated onsite, as well as the days and hours of the employees' shifts.
  - f. Confirm the proposal's compliance with §240-7.10 – Outdoor Lighting. Testimony should include but is not limited to the following items:
    - Footcandle rating throughout the parking area.

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- Footcandle rating throughout both interior sidewalks.
- Footcandle rating throughout the rear yard patio.
- Average level to minimum point ratio for the parking area.
- Average level to minimum point ratio for both interior sidewalks.
- Average level to minimum point ratio for the rear yard patio.
- Proposed mounting height for any building mounted lights.
- Maximum height for any ground-mounted lighting.
- Maximum illumination spillage, if any, onto the right-of-way and adjacent properties.
- The hours of operation for all proposed lighting.

Additionally, the plans should be revised to include a lighting table which outlines the proposals conformance with all lighting requirements as outlined in §240-7.10 of the Borough's ordinance.

- g. To confirm whether any signage is proposed. If signage is proposed, then the plans should be revised to include the location and construction details of all proposed signage. Additionally, the applicant should testify on the proposed signage conformance with §240-11.1 and §240-11.2 of the Borough's Ordinance.
  - h. To confirm the height of the proposed safety fence.
  - i. The submitted plans indicate that 20 trees are proposed for removal. However, the diameter at base height (DBH) is not clearly shown on Sheet 3 of the site plans. Therefore, the required quantity of replacement trees pursuant to Borough Ordinance No. 22-03 – Schedule A cannot be determined at this time. The applicant should provide sufficient testimony confirming the DBH of all trees proposed for removal and revise the plans to include a table including the trees proposed for removal and the DBH of each. This information is needed to determine whether the proposed four replacement trees are the accurate amount.
2. The submitted plans should be revised to include the following revisions:
- a. The site and architectural plans should display the same FAR calculation.
  - b. Elevation plans showing the proposed maximum building height should be provided. The site and architectural plans should display the same calculation for the proposed building height.

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- c. The Zoning Table on Sheet 1 of the site plans should correctly label the "d(4)" FAR variance.
- d. The Zoning Table on Sheet 1 of the site plans should include the exact proposed building height.
- e. The Zoning Table on Sheet 1 of the site plans should include the correct proposed combined side yard setback.
- f. The site and architectural plans should display the same quantity and location of the proposed landscaping.
- g. The site plans should include construction details of the proposed safety fence should be added to the plans.
- h. The site plans should include construction details of the proposed dumpster pad and the proposed six-foot-high fence and gate.
- i. We recommend that additional trees and landscape buffering be included in the rear yard and around the entire parking area.

We trust that these comments will assist the Board members in their review of the application.

Sincerely,

T&M Associates



Caroline Reiter, P.P., AICP  
Board Planner

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**Applicant's Team**

1. Subject Property Owner: Borough of Oradell, 355 Kinderkamack Road, Oradell, NJ 07649; Telephone: 201-261-8200.
2. Applicant: BCUW/Madeline Housing Partners, 6 Forest Avenue, Paramus, NJ 07652; Telephone: 201-291-4050.
3. Applicant's Attorney: Bruce Whitaker, 6 Forest Avenue, Paramus, NJ 07652; Telephone: 201-934-0110. Email: mcwhitlaw@optonline.net.
4. Applicant's Engineer and Surveyor: David A. Hals, 111 Littleton Road, Suite 200, Parsippany, NJ 07054.
5. Applicant's Architect: Raymond J. Virgona, 125 River Road, Suite 201, Edgewood, NJ 07020.

cc: Robert Regan, Esq. Board Attorney  
Dave Atkinson, P.E., Board Engineer

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