



November 13, 2020

**MEMORANDUM TO:** Mendham Borough Zoning Board of Adjustment

**FROM:** Jessica C. Caldwell, P.P., A.I.C.P., Zoning Board of Adjustment Planner

**SUBJECT:** Medical Properties Partners, LLC  
Bulk & Use Variances – BOA #06-20  
Block 602, Lot 1  
30 East Main Street  
Mendham Borough, Morris County, New Jersey

Dear Board Members:

The Applicant is seeking use and bulk variance relief to permit approximately 500 square feet of the first floor of the two-story structure on the subject property to be occupied by a use other than the previously certified pre-existing non-conforming mixed-use office and residential use. The subject property is located in the 1/4-Acre Residence Zone and Historic Zone Overlay District.

1. **Items Submitted:** The Applicant has submitted the following:

- A. Copy of application, checklist and supporting documents.
- B. Application Rider, dated June 26, 2020, prepared by Roy E Kurnos, Esq.
- C. Board of Adjustment Resolution, dated September 8, 2004.
- D. Zoning Officer's notice of violation, dated February 5, 2020.
- E. Property Owner's Consent, dated June 26, 2020.
- F. Site Inspection Form, dated June 26, 2020.
- G. Tax Certification, dated March 5, 2020.
- H. Zoning Map.

2. **Existing Site & Use:** The subject property is 0.58 acres and is currently developed with a two-story structure currently occupied by a medical office on the first level and a separate residential apartment on the second level. The existing medical office and residential use was certified by the Zoning Board of Adjustment as a pre-existing non-conforming use by Resolution memorialized on October 5, 2004. The first-floor medical office has attached to it an annex of approximately 500 square feet that is separated from the medical office. The annex is leased to a third-party entity known as NorthPoint Staffing, LLC, which provides candidates for managerial and administrative positions throughout the U.S., via internet or telephone. The non-medical office use in the annex was not approved as part of the pre-existing non-conforming use on the property.

3. **Proposed Development:** The Applicant proposes to retain the business entity, NorthPoint Staffing, LLC in the first-floor annex, where the use was previously a pre-existing non-conforming medical office. The use is not a permitted use in the 1/4-Acre Residence Zone therefore, a d(2) expansion of a non-conforming use variance is required. There are no modifications proposed to the site to accommodate the new use. The existing two-story structure will retain its current general outward appearance.
4. **Area & Bulk Requirements:** The subject site is located in the 1/4-Acre Residence Zone and Historic Zone Overlay. The following table notes the development's compliance/non-compliance with the same.

**1/4-Acre Residence Zone**

Item	Requirements	Existing	Proposed
Min. Lot Area	1/4 acre 10,890 sf	0.397 acres 17,305 sf	0.397 acres 17,305 sf
Min. Lot Width	125 ft	65 ft (E)	65 ft (EV)
Min. Lot Depth	125 ft	200 ft	200 ft
Min. Front Yard Setback (Orchard Street)	30 ft	27 (E)	27 (EV)
Min. Front Yard Setback (East Main Street)	30 ft	81 ft	81 ft
Min. Rear Yard Setback	25 ft	N/P	N/C
Min. Side Yard Setback	10 ft	N/P	N/C
Max. Building Height	2 ½ stories 35 ft	2 stories	2 stories
Max. Lot Coverage	16,081.5 sf	N/P	N/C
Max. Building Coverage	3,332.7 sf	N/P	N/C
N/S: Not Provided    N/C: No Change    (E): Existing Non-Conforming    (V): Variance			

5. **Review:**

- A. **Use:** According to Section 215-15, any use specified in Article IV as permitted in the 5-Acre, 3-Acre, 1-Acre and 1/2-Acre Residence Zones excluding the maintenance of livestock is permitted in the 1/4-Acre Residence Zone including one (1) single-family dwelling per lot, playgrounds and parks, agricultural uses and home occupations. The Applicant is requesting relief to permit NorthPoint Staffing, LLC in the first-floor annex where the use is not permitted in the zone. Because the site is the location of a pre-existing non-conforming use and the space was previously a medical office and is now proposed to be converted to an office use, an expansion of a non-conforming use variance is required. **A variance pursuant to**

N.J.S.A. 40:55D-70d(2) is required for the expansion of the pre-existing non-conforming uses on the site.

- B. **Signs:** According to Section 215-8E(18), all freestanding permanent signs, window signs and wall signs erected, altered or reconstructed within the Main Street Corridor or the Historic District Overlay Zone, excluding signs classified as a “window sign, temporary, noncommercial” as defined in Section 215-8B and signs exempt from a sign permit requirement as set forth in Subsection E(2) of this section, shall be subject to review by the MSC Design Review Committee or the Historic Preservation Review Commission in accordance with the guidelines established in Article XIA of Chapter 195 or Article XV of Chapter 215 of the Borough of Mendham Code, as applicable. The Applicant should discuss any proposed signage on the property. Any proposed changes must be approved by the Mendham Borough Historic Preservation Commission (H.P.C.).

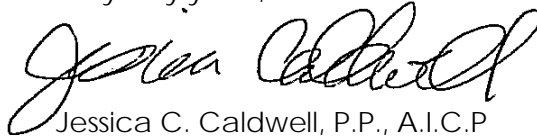
6. **Criteria for Granting “D” Variances:**

- A. **“d(2)” Variance – Expansion of a Non-Conforming Use:** The pre-existing non-conforming uses will be changed by converting a section of the building from medical office to general office, requiring a d(2) variance.
- i. The applicant in the case of a d (2) expansion of a non-conforming use need not show that it would have been granted the variance initially, Kohl v. Fair Lawn. Instead, the Applicant must meet the positive and negative criteria as identified in the MLUL.
  - ii. The courts have found that “special reasons” can be met in the expansion of non-conforming use cases where the proposal minimizes the non-conforming aspects of the application and/or improves the compatibility of the property with the surrounding neighborhood, Burbridge v. Mine Hill Tp. In this case, the Applicant should discuss improvements proposed to the site, including visual improvements and if landscaping and other exterior improvements can be made.
  - iii. The Applicant must also address the two-pronged negative criteria. The first prong is that the use as proposed will not cause substantial detriment to the public good. The Applicant must focus on the surrounding neighborhood and show that the use as proposed does not cause substantial detriments and that if there are any detriments, that they can be mitigated so as to not be substantial. The second prong is

a showing that the granting of the variance will not substantially impair the zone plan or zoning ordinance.

7. **Criteria for Granting "C" Variances:** The Applicant is seeking bulk variances for the minimum lot width of 125 feet where the existing lot width is 65 feet and for the minimum front yard setback of 30 feet where the existing front yard setback is 27 feet. Both the lot width and front yard setback are an existing non-conforming condition. No changes to the principal structure are proposed. Variances can be granted by the Board, pursuant to N.J.S.A. 40:55D-70c where two provisions exist:
- A. The first provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(1) where the Board must find whether there has been a showing of peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structure lawfully existing thereon.
  - B. The second provision for granting a "c" variance is under N.J.S.A. 40:55-70c(2) where the Board must find that the application related to a unique situation on a specific piece of property, that the purposes of the MLUL would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting the variance outweigh any detriments and that the variance will not substantially impair the zone plan or ordinance. Under c(2), the Applicant should show that the proposal is a better zoning alternative to that which is permitted by the ordinance and provides benefits to the community as a whole, not just the applicant.
  - C. In both cases, the negative criteria must be met, which includes a showing that the proposed variances will not cause a substantial detriment to the public good (the neighborhood) or substantial impairment of the master plan and zoning ordinance.

Very truly yours,



Jessica C. Caldwell, P.P., A.I.C.P.

**J. Caldwell & Associates, LLC**

Mendham Borough Zoning Board Planner

cc: Via-Email Only

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