

**Denial of:**

- (i) Use Variance with Preliminary and Final Site Plan and Subdivision Approval,
- (ii) d(4) FAR variance,
- (iii) lot coverage variance,
- (iv) front yard setback variance,
- (v) rear yard setback variances,
- (vi) parking configuration variances, and
- (vii) street frontage variance;

**Denial of:**

Modification to Prior Use Variance to eliminate prior restrictions prohibiting subdivision and requiring open space;

**Approval of:**

Use Variance for one story Assisted Living facility for Alzheimer's and Dementia only (subject to submission of amended site plan).

**RESOLUTION**

**ORADELL BOARD OF ADJUSTMENT**

**APPLICATION OF BLAUVELT ASSOCIATES, LLC  
CAL #753-08**

WHEREAS, Blauvelt Associates, LLC (hereinafter referred to as the "Applicant"), made an application for the development of an assisted living facility specifically limited for persons with dementia, Alzheimer's disease, and other such forms of mental impairments; and

WHEREAS, said application proposed a project that was in violation of the following Ordinance sections:

- (i) Oradell Zoning Ordinance Section 240-7.5A(1) relating to permitted uses in the zone;
- (ii) Oradell Zoning Ordinance Section 240-7.5A(4)(e) relating to permitted floor area ratio (33% permitted where 38.2% proposed, exclusive of the basement level and inclusive of lot area proposed for driveway easement area providing access to the Blauvelt Mansion);

- (iii) Oradell Zoning Ordinance Section 240-7.5A(4)(d) relating to maximum lot coverage (40% permitted where 43.5% proposed);
- (iv) Oradell Zoning Ordinance Section 240-7.5A(4)(b)(1) relating to minimum front yard setback (35 feet required where 30 feet proposed);
- (v) Oradell Zoning Ordinance Section 240-7.5A(4)(b)(2) relating to minimum rear yard setback (48.75 feet required where 35 feet proposed);
- (vi) Oradell Zoning Ordinance Section 240-7.6 relating to off-street parking on Lot 2.0 (55 spaces required where 10 spaces proposed);
- (vii) Oradell Zoning Code Section 240-7.6 relating to parking in front and side yards which is prohibited;
- (viii) Oradell Zoning Code Section 240-7.6A(9) relating to landscaped islands (1 island per 10 adjacent parking spaces required where 1 island per 14 adjacent parking spaces proposed);
- (ix) Oradell Zoning Code Section 240-13.12 relating to requirement of frontage on a public street (where 50 feet is required and 0 feet is proposed);
- (x) certain other variances and waivers sought as set forth in the application and public notice; and

WHEREAS, the Applicant also applied for a modification of a prior 1995 use variance granted on the property restricting the portion of the subject property to be vacant and requiring open space in the front yard and prohibiting further development and subdivision of the front of the property; and

WHEREAS, the subject property is known and designated on the Tax Map of the Borough of Oradell as Block 805, Lot 2 and is more commonly known as 699 Kinderkamack Road, Oradell, New Jersey (hereinafter the "Premises"), and is located in the R-1 Zone of the Borough of Oradell; and

WHEREAS, Block 805, Lot 1 was involved because of the access to the subject Premises over same (all reference to the "Premises" also includes the access over Lot 1 as well); and

WHEREAS, the matter was called for at the following public hearings, five of which were special meetings of the Board scheduled to expedite a review of the application:

1. Jun 17, 2008 (Regular Meeting)
2. July 16, 2008 (Special Meeting)
3. August 18, 2008 (Special Meeting)
4. September 15, 2008 (Special Meeting)
5. October 21, 2008 (Regular Meeting)
6. October 27, 2008 (Special Meeting)
7. November 24, 2008 (Special Meeting)

WHEREAS, at such times, the Applicant was represented by Joseph L. Basralian, Esq. of the law firm of Winne Banta Hetherington Basralian & Kahn, PC, 21 Main Street, Hackensack, New Jersey; and

WHEREAS, the following witnesses testified on behalf of the Applicant during the course of the hearings:

1. Timothy Hodges, Vice President of Operations for Care One;
2. Dr. Margaret Calkins, PhD, of Innovative Designs in Environments for an Aging Society Consulting, Inc. ("IDEAS"), was qualified as an expert in Environmental Behavioral Research and architecture;
3. Leslie C. Hendrickson, PhD, Visiting Professor at the Center for State Health Policy of Rutgers University, was qualified as an expert in Medicare, long term facility analysis, nursing homes, assisted living, and determination of need;
4. Alexander J. Lapatka, P.E., of Lapatka Associates, Inc., was qualified as an expert in engineering;
5. David R. Shropshire, P.E., P.P., of Shropshire Associates, LLC, was qualified as an expert in traffic engineering;
6. Peter G. Steck, P.P., was qualified as an expert in professional planning;
7. Jeffrey Wells, AIA, of Wells Associates, was qualified as an expert in architecture (and was also the property owner who consented to the application);

WHEREAS, the following witnesses testified in opposition to the Applicant's proposal during the course of the hearings:

1. Mr. Abassi, of 656 East Drive, Oradell, New Jersey;
2. Mr. Young, of 671 East Drive, Oradell, New Jersey;
3. Dr. Teichholz, of 718 Schirra Drive, Oradell, New Jersey;
4. Mr. Tricarico, of 676 East Drive, Oradell, New Jersey;
5. Mrs. Young, of 671 East Drive, Oradell, New Jersey;
6. Ms. Schwartz, of 676 Cooper Avenue, Oradell, New Jersey;
7. Ms. Kohl, of 664 East Drive, Oradell, New Jersey;
8. Mrs. Reynolds, of 405 Oradell Avenue, Oradell, New Jersey;
9. Ms. Yaxleyschmidt, of 780 Woodland Avenue, Oradell, New Jersey;
10. Ms. Cole, of 664 East Drive, Oradell, New Jersey;
11. Mr. Cangelosi, of 229 Merritt Drive, Oradell, New Jersey;
12. Ms. Sonja Hanlon, of 954 Phyllis Drive, Oradell, New Jersey;
13. Mr. McConnell, 415 Oradell Avenue, Oradell, New Jersey;

WHEREAS, the following witnesses testified on behalf of the Oradell Board of Adjustment (hereinafter "the Board") during the course of the hearings:

1. Mr. Joseph Burgis, P.P., of Burgis Associates, Inc., the Board's Planner;
2. Mr. Kain, P.P., also of Burgis Associates, Inc.
3. Mr. Kenneth Boswell, P.E., of Boswell McClave Engineering, Inc., the Board's engineer;
4. Mr. Jeff Morris, P.E, also of Boswell McClave Engineering, Inc.
5. Mr. John Pacholek, P.E., also of Boswell McClave Engineering, Inc.

6. Mr. Stephen Depken, Borough of Oradell Zoning Officer;

WHEREAS, the Board made a physical inspection of the Premises during the course of the proceedings; and

WHEREAS, the Oradell Board of Adjustment, after considering the testimony of the Applicant and witnesses and reviewing the exhibits and proofs, hereby summarizes the information provided, addresses various legal issues, and makes the following findings of fact and conclusions of law:

### I. CONFLICT OF INTEREST

A. Several members of the Oradell Board of Adjustment may be burdened by impermissible conflicts of interests or an appearance of impropriety. Strict adherence to the Local Government Ethics Law compels those members to step down from the Board and/or disqualify themselves from considering the application. In particular, conflicts of interest and/or the appearance of impropriety was addressed in the case of the following board members:

1. Chairman Joseph Polyniak. A member of Chairman Polyniak's immediate family (his emancipated son) has or has had a casual business relationship with Jeffery Wells, the Applicant's architect and the owner of the premises. Because of the personal involvement of a member of Mr. Polyniak's immediate family with the property owner, even though remote, and even though his son was emancipated, he voluntarily disqualified himself from the proceedings;
2. Board Member Steve Lang. A member of Board Member Lang's immediate family had a political relationship with a member of the public that voiced opposition to the application for development, Mr. Paul

Young. More specifically, Board Member Lang's wife was a candidate for Oradell Council on the same electoral slate (i.e., the "ticket") with Mr. Young during an election that occurred prior to this application. Initially, because the election had concluded prior to the filing of the application, Mr. Lang participated in the hearings, but after discussion with Counsel to the Applicant and the Board at the August 18, 2008 special meeting, Mr. Lang voluntarily disqualified himself from the proceedings due to the personal involvement of Mr. Lang's wife with one of the objectors.

B. During the prior application, other Board Members, notably Board Member Rita Walker, Board Member James Sattely, and Board Member Marvin Michelman, recused themselves because of a personal interest or involvements that may have created the appearance of impropriety. For example, during the same election for which Board Member Lang's wife ran on the same electoral slate as Mr. Young, Board Member Walker was the Finance Chairperson for the ticket. Board Member Michelman was employed by the same employer as a member of an organized objector's group in the prior application, which group was not objecting to the current Application. Board Member Sattely's wife had previously contributed money to the electoral slate on which Mr. Young and Mr. Lang's wife were candidates. These prior relationships were deemed, by Counsel to the Board, Counsel to the Applicant and the Board Members themselves, as too tenuous to require recusal or disqualification. As a result, Board Members Walker, Michelman, and Sattely did not disqualify themselves from the proceedings and participated in the entirety of the Application.

C. The Oradell Board of Adjustment is comprised of seven (7) regular members and two (2) alternate members. Due to potential conflicts of interests and/or the appearances of

impropriety, two regular members disqualified themselves and stepped down from the board during the pendency of the application. Their decisions to do so leaves the Board with five regular members and two alternate members, for a total of seven members to consider the application.

## **II. THE PREMISES, THE SURROUNDING AREA, AND THE PROPOSED USE**

A. The Premises (excluding Lot 1) is a rectangular-shaped parcel of approximately 4.3 acres. The subject property is bounded to the east by Kinderkamack Road, to the south and west by single-family residential dwellings whose frontage is on East Drive, and to the north by the property of the Blauvelt-Demarest Foundation, Inc. (Block 805, Lot 1).

Presently, the Premises are improved with the historic Blauvelt Mansion, which has existed since the late nineteenth century and is considered an important feature of the area by the community. There is another structure on the westerly half of the parcel. The easterly half of the Premises is unimproved and is occupied mostly by a large open field directly in front of the Blauvelt Mansion. While the Premises maintains over 500 feet of frontage along Kinderkamack Road, it gains access to that roadway via an access easement vested in the owner of the Blauvelt Mansion over Block 805, Lot 1 owned by the Blauvelt-Demarest Foundation, LLC.

The Premises currently contains two residential dwellings, with the historic Blauvelt Mansion serving as the home of Jeffrey and Bonnie Wells as well as professional offices for Wells Associates, an architectural firm. The property owner also previously received use variance approval from the Board by resolution dated March 28, 1995 to construct a second principal use on the subject property, that of a house for Mr. Ray Wells. They had also previously obtained a use variance from the Board to use the Blauvelt Mansion for professional office use in part of the home of Mr. and Mrs. Jeffrey Wells.



B. The main topographic feature of the Premises is a steep hill that climbs west from Kinderkamack Road to the rear property line. The frontage along Kinderkamack Road has an approximate elevation of forty (40') feet above sea level while the rear property line has an elevation of approximately one hundred eight (108') feet above sea level, such that the rear of the Premises is approximately seventy (70') feet higher than along the frontage.

C. The Applicant proposes to develop an adult congregate care assisted living facility for persons with dementia and Alzheimer's disease on the front portion of the Premises, which is not a permitted use in the R-1 district of the Borough of Oradell, as the zone permits single-family residential uses.

D. The Applicant seeks use variance relief, amended site plan, preliminary and final minor subdivision approval, amended use variance relief, FAR variance relief, and numerous bulk variances for its development. The Applicant did not present a case for bifurcated use variance approval.

### III. THE PROCEEDINGS

A. The following exhibits were marked into evidence by the Applicant for the Board's consideration:

- A-1 Blauvelt Associates, LLC Drawing Number PA-1 prepared by Wells Associates revised through 6/5/08 — Floor Plan & Elevation
- A-2 Blauvelt Associates, LLC Drawing Number PA-2 prepared by Wells Associates revised through 6/5/08
- A-3 Blauvelt Associates, LLC Drawing Number PA-5 revised through 7/16/08 prepared by Wells Associates — Street Scope
- A-4 Blauvelt Associates, LLC Drawing Number PA-1 dated 7/16/08 — Depicts street scope and cross sections
- A-5 Blauvelt Associates, LLC Minor Subdivision Plan dated 6/4/08 Consisting of One Sheet prepared by Lapatka Associates, LLC

- A-6 Blauvelt Associates, LLC Site Plan dates 6/4/08 Consisting of 8 Sheets 1 to 8:
  - A-6-1 Site Plan
  - A-6-2 Existing Conditions
  - A-6-3 Grading/Drainage/Erosion Control Plan
  - A-6-4 Lighting Plan
  - A-6-5 Landscaping Plan
  - A-6-6 Details
  - A-6-7 Possible Future Driveway Plan
  - A-6-8 Site Profile
- A-7 Colorized Rendering of Landscape Scope
- A-8 Curriculum Vita of Leslie Hendrickson, PhD.
- A-9 Demographical and Need Analysis Exhibits prepared by Leslie Hendrickson, PhD. September 15, 2008
- A-10 Curriculum Vita of Margaret Calkins, Ph.D.
- A-11 Pictorial of Walkthrough of Care One Harmony Village at Moorestown dated 8/15/08 prepared by Boswell Engineering
- A-12 Traffic Engineering Assessment Report dated 9/7/07 revised 7/7/08 prepared by Shropshire Associates LLC
- A-13 Colorized rendering of site, Sheet 8 of Site Plan (supersedes Exhibit A-7) — revised through August 29, 2008
  - A-14.A Mansion pictograph from Kinderkamack Road prepared by Jeffrey Wells
  - A-14.B Mansion pictograph from Kinderkamack Road prepared by Jeffrey Wells
  - A-14.C Mansion pictograph from Kinderkamack Road prepared by Jeffrey Wells

A-15 Simulated drive by of proposed facility and Blauvelt Mansion  
9/15/08

A-16 Curriculum Vita of Peter Steck, P.P.

A-17 Photographic exhibit consisting of four (4) pages marked S—1  
through S-4 prepared by Peter Steck

A-18 Zoning Treatment in Bergen County for assisted living

A-19 Care One facilities FAR in Bergen County

B. Several procedural issues were raised during the course of the hearings that were required to be dealt with incident to the hearing of this application as discussed herein.

C. As stated, substantive hearings were conducted June 17, 2008, July 16, 2008, August 18, 2008, September 15, 2008, October 21, 2008, October 27, 2008, and November 24, 2008. A brief synopsis of the testimony is as follows:

1. At June 17, 2008, upon proper notice by the Applicant, the Board determined that the application filed in 2007 and denied by Resolution of the Board dated February 11, 2008, was sufficiently distinguishable from the Application presented herein, to allow the Board to consider the revised development plan. Counsel for the Applicant described the changes that the Applicant had made after its initial plan was denied, including the reduction in the number of units proposed from 76 units to 68 units (a 10% reduction), increasing the open space from 46% to 56.5% (a 22.6% increase), a reduction in the F.A.R. from 50.1% to 38.2% (a 23.6% reduction), a reduction in the height of the building to a conforming 32 feet, an increase in the rear yard setback from 24 feet to 35 feet (an increase of 45.8%), and an increase in the lot area of Lot 2.01 from 88,429 square feet to 99,974 square feet (a 13.1% increase).

Although the use of the premises remained the same as the initial proposal and the need for use variance and subdivision relief was necessary, the changes regarding the bulk of the

building, the lot configuration, and the changes in the bulk variances were sufficient to enable the conclusion that the principles of *res judicata* were not applicable to preclude the Board from considering the application, and that the Board would be entitled to review the new plan. No witness testimony was taken at the June 17, 2008 hearing.

2. At the July 16, 2008 hearing, the Board heard the testimony of the first witness, Timothy Hodges, Vice President of Operations for Care One, the entity that would be managing the facility. Mr. Hodges testified that the Applicant, Blauvelt Associates, LLC, was an affiliate of Care One, and that Care One operated seven facilities in Bergen County, including one on Kinderkamack Road (south of the subject premises) in Oradell. Mr. Hodges explained that his role within the company was to oversee a multi-disciplinary team of clinicians, financial personnel, environmental services and the regional team that supports the centers.

Mr. Hodges testified that this facility would have 68 units and would be oriented toward individuals who have Alzheimer's disease or related memory impairments, but were in earlier stages of the disease, than a traditional nursing home patient, whose symptoms are typically more advanced, thereby necessitating a higher level of care. Mr. Hodges explained that by virtue of the disease progression, the assisted living facility was designed to offer a feel of more personalized care for their patients without the level of service offered in a nursing home. He testified that this was done by creating a managed environment of group neighborhoods to create the sense of community. This would be done by breaking the facility into four "neighborhoods", each with 17 residential units, a small dining area, a living area, and a recreation area.

According to Mr. Hodges, the staffing requirements of the facility amounted to 8 department heads, 11 caregivers, 2 housekeepers, and 3 dietary staff members. He testified that the maximum number of employees on site at any time would be 21 or 22.

Addressing the number of residents for the facility, Mr. Hodges explained that Care One had a fixed management team and a fixed overhead that was a necessary to operate the facility. To maintain competitive pricing, Mr. Hodges opined that the facility would need to be occupied by 68 residents, otherwise, Care One would need to either cut costs or increase fees to the residents. Both of these options were unacceptable to Care One. However, Mr. Hodges provided no factual support or data to buttress this claim that 68 bedrooms was the appropriate amount from a patient-caregiving perspective. Instead, he testified that a smaller project, perhaps of 34 residents, could not support the management team, because while the bedroom count would be eliminated, according to Mr. Hodges, the size of the management team could not shrink based upon Care One's business model. Despite that testimony, Mr. Hodges refused to divulge any information about the cost structure for the facility or any financial information, suggesting that it was proprietary. Without access to the "proprietary" information, the Board is unable to agree with Mr. Hodges that a 68 bed facility is necessary from a caregiving prospective, and is forced to conclude that Care One wants a facility of that size to meet certain unknown and unspecified financial targets.

Responding to a question by the Board, Mr. Hodges indicated that Care One never considered a number of smaller structures on the Property, such as creating four separate and detached neighborhoods of 17 bedrooms, so as to break up the visual appearance of the large building in front of the Blauvelt Mansion. Mr. Hodges indicated that the facility required an inner courtyard, which would be impossible under a different design configuration. Thus, the need for an inner courtyard, and Care One's decision to build all bedrooms in excess of 500 square feet, drove the design of the structure. The Applicant's decisions in this regard have significantly limited its flexibility in designing a facility that can fit on the property and not be

visually or aesthetically imposing.

3. At the August 18, 2008 proceedings, Dr. Margaret Calkins testified on behalf of the Applicant. She explained that she is the President and Chairwoman of Innovative Designs in Environment for an Aging Society, and that her education consisted of a bachelors degree in psychology and a Masters Degree and PhD in architecture. Dr. Calkins' testimony consisted of an explanation of her design philosophy, an overview of how to accomplish successful care of Alzheimer's patients through the facility's design, layout and decoration, and a comparison of other similar facilities.

With respect to other facilities, Dr. Calkins noted that the size of assisted living facilities had increased since the early 1990s, when they were smaller. In fact, Dr. Calkins stated that the average size of an assisted living facility in 2007 was 77 beds, and it was her belief that the reason for the increase was primarily to take advantage of economies of scale. That figure was supported by reference to a study conducted by another of the Applicant's experts, Dr. Hendrickson, and was published in Volume 47 of the Gerontologist, and entitled, "Characteristics of Residents and Providers in the Assisted Living Pilot Program." She also testified that she was not involved in selecting the Property for this facility, but gave an opinion that it was an "eminently workable location" for which she had "no qualms." The Board agrees that the site is "workable" for development, though not what is presented by the Applicant here. A less intensive design, with a less massive facility would address the Board's concerns.

Dr. Calkins testified that her review of the literature reflected that the best outcomes for Alzheimer's disease patients occurred when they were housed in groups of 20 or less, and that negative outcomes occurred in groupings above 30. However, she was unable to point to any studies that discussed what number of beds, under 20, would yield the best outcomes for the

residents (i.e., Dr. Calkins indicated that there were no studies that she was aware of that compared the outcomes of a 9 bed neighborhood to a 12-15 bed one). As a result, she designed the layout with 17 units per neighborhood. The Board is unsure whether so large a neighborhood is required or why 17 units was chosen as the Applicant did not establish that 17 unit neighborhoods was the optimal size. The Board notes that the prior design, denied on February 11, 2008, did not propose four neighborhoods of 17 units each, and therefore questions what new information, if any, was available to the Applicant but not provided to the Board.

In contrast to the testimony of Mr. Hodges, Dr. Calkins testified that the average size of a shared room in assisted living facilities was 270 square feet and an individual room was 214 square feet. The purpose, according to Dr. Calkins, of not developing four detached units for each neighborhood of 17 residents, was to prevent duplication of services that would result if the facility was spread out across the Property. In the event that fewer beds were provided, perhaps if the second floor were removed from the plan, Dr. Calkins reiterated that Care One would need to charge the residents more to make the facility “economically viable”. There was no testimony on how much more a resident would have to be charged and how a reduction in number of beds would cause a reduction in the profit of the facility, or even what was the rate of return for a larger facility as opposed to a smaller facility. The Board is not obligated to consider the ability of the Applicant to offer its product and services at a competitive price when making variance decisions, so the economic viability of the facility is irrelevant to the Board’s decision.

One of the factors that Dr. Calkins pointed to when discussing positive outcomes for residents was the ability to look out of their bedroom windows and see other residences. Ostensibly, such a view would help the residents to feel like they are living in a home environment, rather than an institution. She also testified that early stage Alzheimer’s and

dementia patients are able to care for themselves and plan out complex functions. She testified that most do not have the need for 24-hour medical care as would be found in a nursing home. She advised the Board that the residents at this facility would have their own rooms but would share common areas. The facility was to be divided into four "households" of 17 residents each.

4. At the September 15, 2008 hearing, Dr. Leslie Hendrickson testified on behalf of the Applicant. He testified that he had been retained by Care One to determine whether there was a need for a dementia care program in the area. He advised that he usually worked as a consultant for Applicants and examined the underlying data to determine whether a need existed in the market for the particular type of care being proposed. Dr. Hendrickson examined U.S. census data and projected the need for dementia care in Bergen County. His projections were based on an examination of similar services in the area, where the information was collected by calling 13 assisted living facilities and collecting information from nearby nursing homes as well. Dr. Hendrickson's projections yielded a total of slightly more than 21,000 persons in Bergen County suffering from dementia related illnesses, with a 70-30 split in home versus institutionalized care, which suggested that 6,500 beds were needed in Bergen County, and that a total of 439 beds were currently available. Dr. Hendrickson therefore concluded that Bergen County faced a significant shortfall in its dementia care facilities.

5. The Applicant's site engineer, Mr. Alexander Lapatka, P.E., also testified on September 15, 2008. Lapatka described the configuration of the two lots, which collectively comprised 4.34 acres. The Blauvelt Mansion and the residential dwelling, which comprise the rear half of the Property, would become Lot 2.0, and would comprise 2.04 acres. The assisted living facility would be located along the Property's frontage of Kinderkamack Road, and would be approximately 2.3 acres. Since Lot 2.01 would span the entire frontage of the Property,



ingress and egress from Lot 2.0 would be achieved through an easement across the northern portion of Lot 2.01, with an area of approximately 9,750 square feet. At the current time, the Blauvelt Mansion is accessed via a private road crossing another, adjacent property, and there is a problem as to the continuity of the easement agreement that limits such access (i.e., on what conditions the easement extinguishes and full title reverts to the fee simple owner).

Ingress and egress from the Property would be limited to the southbound lanes and vehicles would not be permitted to enter the parking area from the northbound lane of Kinderkamack Road, nor would left turns into the northbound lane of Kinderkamack Road be possible.

Mr. Lapatka testified that efforts had been made to accommodate the historical aspects of the Property, including preservation of the views of the Blauvelt Mansion. To do so, the assisted living facility would be located in the southern portion of Lot 2.01, approximately 20 feet from the southern property line and closest to the adjacent residential homes to the south. The building would sit 35 feet from Kinderkamack Road and the rear property line, and 230 feet from the northern property line. Due to steep grade of the Property, a terraced grading scheme with retaining walls was being proposed. To accomplish the grading, approximately 18,000 cubic yards of soil would need to be exported from the site. This is a 70% increase from the prior application, and would require approximately 900 truck trips during the construction process using 20-yard dumpsters. Despite these efforts, the Blauvelt Mansion would be obscured from view along part of the frontage on Kinderkamack Road.

Mr. Lapatka explained that this facility would have a floor area of 38,213 square feet, where the prior proposal called for 44,666 square feet, and the proposed building coverage was 21,147 square feet while the prior application called for 24,848 square feet. The parking lot

would have space for 34 cars. The development yielded an F.A.R. of 38.2%. However, if the 9,750 square foot easement area for the rear lot is not included, the F.A.R. would increase to 42.2%. If the basement area (12,070 square feet) were included in the floor area of the facility, the F.A.R. would increase to 50.2% (or 55.7% without the easement area).

Due to the sloping topography, Mr. Lapatka explained that residents on the west side of the building, whose windows would only be a few inches above finished grade, would have a view of the up-sloping hill towards the Blauvelt Mansion and a row of evergreen trees. Mr. Lapatka also testified that rooms facing east would view Kinderkamack Road. Rooms facing south would view a row of trees and a line of evergreens along the property line. There were no rooms planned for the north side of the building.

With respect to the landscaping, Mr. Lapatka testified that the trees would eventually reach 40 to 60 feet in height and would grow together to close up spaces between them. Based on the testimony of Mr. Lapatka, it appears that views from the facility, for the most part, would be of evergreen trees and busy roads, with office buildings behind them.

Respecting the lot orientation, Mr. Lapatka testified that he was unaware of any lots within the Borough of Oradell that lacked frontage on a public street. The Board engineer and planner were of the same opinion. Mr. Lapatka acknowledged that in his experience, the practice of subdividing lots so that one or more lacks such frontage is uncommon. Mr. Lapatka indicated that Lot 2.0 could be provided with some frontage, but doing so would come at the expense of the lot area of Lot 2.01, and would necessarily increase the F.A.R. and building coverage variances needed for the proposed assisted living facility. In short, to obtain a lower FAR on proposed Lot 2.01, the project was designed so that rear Lot 2.0 had no frontage on a public street, and access could only be obtained by way of an easement across Lot 2.01.

The parking lot for the assisted living facility, according to Mr. Lapatka, would be compliant with 34 parking spaces, a reduction from the 44 spaces proposed in the first application. The parking lot would not, however, have any landscaped islands as required by the Borough of Oradell Zoning Code, and would be located in the side yard, which is prohibited. Mr. Lapatka testified that lighting in the parking lot would be provided by 150-watt metal halide bulbs on 16.5 foot tall light fixtures that would be shielded downward. There would also be lighting on the proposed walkway that connected the building to the parking area, as well as on the northwest corner of the building. Mr. Lapatka testified that lighting would not spill or produce glare that would be visible from the residential properties. However, these types of light fixtures do not currently exist near the residential structures in Oradell's R-1 Zone.

6. On October 21, 2008, the Applicant's planner, Peter Steck, P.P., testified. Mr. Steck described the neighborhood, including the residential dwellings to the south (whose back yards are 38 feet in elevation above the area where the assisted living facility is to be located), the Blauvelt Mansion to the west, the Blauvelt-Demarest Museum to the north, and Kinderkamack Road to the east, with office buildings beyond the roadway. He also described the Property and the relief necessary to approve the Application. He noted that the Property is zoned for single family residential uses, and while the assisted living facility is not for families, it is still fundamentally a residential use.

Summarizing the rationale for the variances, Mr. Steck emphasized that the facility is an inherently beneficial use because it provides a needed service for a subset of the population that is in need of such services. According to Mr. Steck, one of the benefits of having an assisted living facility in a residential zone was to enable the residents to maintain contact with the outside world, even though the facility will not look like a traditional house. Mr. Steck also

reported that some of the units in the assisted living facility could be counted towards the Borough's affordable housing obligations under the rules recently adopted by the Council on Affordable Housing. However, the Board Planner, Mr. Burgis, advised the Board that the development would also create a growth share obligation for the Borough so the benefits of satisfying in some small way the Borough's affordable housing obligations was not as substantial as contemplated. As the Board determined in the first application the proposed use (assisted living for Alzheimer's and dementia patients) was an inherently beneficial use, the Board had made the same determination at the beginning of this case, so the Board determined as a matter of law that the Applicant satisfied the positive criteria of its use variance burden but still needed to satisfy its burden on the negative criteria.

Addressing the negative criteria for the use variance, Mr. Steck argued that the negative aspects, such as increased traffic, disharmony with the single family zone character, and the issue of the size of the building, are mitigated by the site plan. Mr. Steck pointed to the location of the facility on the south side of the lot, which does not cause as large an impact on the views of the Blauvelt Mansion as would a location towards the middle of the property, the substantial landscaping, and the architecture as examples of how the site plan mitigated the negative impacts of placing this facility in the R-1 zone. He also emphasized that the steepness of the slopes on and near the Property would help buffer the nearby residential properties – the steep slopes on the south side of the Property would protect the homeowners in that area from the prohibited use.

Regarding the F.A.R. variance, Mr. Steck discussed the F.A.R. of other Care One facilities in Bergen County. For example, he noted that the F.A.R. in Cresskill was 28.2%, Westwood was 26.4%, Paramus was 47%, Teaneck was 62%, and Hackensack was 80%. The existing Care One center on Kinderkamack Road in Oradell maintains a F.A.R. of 29.4% (i.e.,

30% less intensive than the proposed facility). That facility is not located in a residential zone. Mr. Steck did not describe the areas surrounding the other facilities and did not describe the context of the more intense facilities, such as those in Teaneck and Hackensack, but the Board's experience and familiarity with the area leads to the conclusion that those facilities are not in areas similarly situated to the Property's situs in Oradell.

Mr. Steck testified that the smallest of the Care One facilities, located in Cresskill, was 33,090 square feet, while this facility was proposed at 38,455 square feet. Utilizing the data provided by Mr. Steck, this reveals that the Cresskill building is 14% smaller than the proposed development, even though the lot on which that facility sits is 15% bigger (117,369 square feet).

Mr. Steck also discussed the parking areas. He testified that if a church were developed in place of the assisted living facility, parking would be permitted in the side yard of Lot 2.01. During Mr. Steck's testimony, there was a discussion about when a place of worship would be used, and regarding a church, it was established that the heaviest demand for parking would occur on Sunday, rather than every day during the week. Although he referenced the need for a variance from the requirement for landscaped islands in the parking lot, Mr. Steck did not provide substantive testimony to support that variance.

7. At the October 27, 2008 hearing, Mr. Steck continued his testimony. He referenced the Master Plan's intention of preserving the prevailing residential character of the R-1 zone, but contrasted that desire with the Borough's ordinance that permitted churches on the Property. He testified that churches are larger than houses, so the governing body was not set on requiring the size of structures typically affiliated with single family residential homes in the R-1 zone. He did, however, remind the Board that his reference to churches pertained solely to the issue of parking in a side yard rather than the permissibility of such a use on the Property. At no

time did Mr. Steck address the issue of oversized churches that violate the bulk restrictions for the R-1 Zone. Mr. Steck's analogy could be appropriate if there were not two other principal uses on the undivided Property and if no variances were needed.

Mr. Steck recognized that traffic generation would be larger than for a single family subdivision, and was thus part of the negative criteria to be considered by the Board. Mr. Steck also discussed the visual impact of the property in connection with the negative criteria, and reminded the Board that in his opinion, the development maintained more of a residential character than a commercial one. As a result, he concluded that the Application would not adversely affect the usability of surrounding properties for single family usage. Moreover, Mr. Steck testified that the Application was not be substantially detrimental to the Master Plan.

Mr. Steck emphasized that this use was of extreme importance, given the need for such facilities in Bergen County. As a result, he believed that greater negative impacts could be tolerated. Mr. Steck did not provide any testimony regarding the negative impacts arising from the subdivision of the Property, on which a prior use variance had been granted in 1995, where such subdivision would have the effect of intensifying the use on proposed Lot 2.0 and violate the existing restrictions against subdivision and the preservation of that open space requirement in front of the Blauvelt Mansion. Moreover, Mr. Steck failed to provide any testimony that Lot 2.0, after the proposed subdivision, is particularly suitable for two principal uses, one of which, the professional use, is prohibited in the R-1 Zone. The Applicant's planner failed to address the negative criteria for that amended use variance and did not discuss the enhanced burden of proof required for such a modification of the 1995 use variance pursuant to Medici v. BPR Co., Inc., 107 N.J. 1 (1987).

8. The Applicant's traffic expert, David Shropshire, P.E., P.P., also testified

on October 27, 2008. Mr. Shropshire discussed the trip generating capacity of the facility and noted that this project would generate very little traffic, given the size of the building. In particular, he testified that he had calculated a 68 unit assisted living facility would generate 10 trips during the peak A.M. hour and 15 trips during the peak P.M. hour. According to Mr. Shropshire, the vast majority of the trips generated by the facility would be from employees arriving for work and departing from work. He explained that there was less visitor traffic than one might otherwise expect. Shropshire noted that the ingress/egress design would not deter a determined motorist from turning left onto Kinderkamack Road, despite the “park chop” design. He did indicate that the County could prohibit left turns into the facility. He did not discuss impacts from u-turns off site as a result of the “pork chop” configuration of the access road.

9. The owner of the Property, and the project architect, Jefferey Wells, AIA, also testified on behalf of the Applicant on October 27, 2008. Mr. Wells testified that the plan was developed by programmers that deal with Alzheimer’s and dementia care. They recommended that each neighborhood of the facility, which were proposed to accommodate 17 residents each, be designed with a central corridor separating two focal areas. The overall design layout was to be surrounding a central courtyard that could be accessed by the residents, and onto which, some of the bedrooms would overlook.

Mr. Wells described how the building was designed to mimic some of the features of the Blauvelt Mansion and accentuate that style of design. For example, the assisted living facility would share the shingle style architecture.

Mr. Wells indicated that the first floor of the Blauvelt Mansion was 95 feet above sea level while Kinderkamack Road was 39 feet above sea level. The proposed first floor of the assisted living facility would be 54 feet, while the maximum ridge height of the building would

be 86 feet above sea level. Thus, in absolute terms, the highest point on the roof of the assisted living facility would be below the base of the Blauvelt Mansion to its rear. Mr. Wells also noted that the facility would also be lower than the residential properties located nearest to the south property line of proposed Lot 2.01. Although the first floor elevation of the Blauvelt Mansion is, in absolute terms, above the ridge line of the assisted living facility, based on the size of the proposed building and its proximity to Kinderkamack Road, it does not appear that the mansion will be visible from the road fronting the proposed building.

Mr. Wells presented an exhibit that simulated the views from Kinderkamack Road. He also discussed the views from the Blauvelt Mansion across Kinderkamack Road and what residents of the facility could expect to see. In particular, Mr. Wells stated that from the lawn area, there is no view of the residential dwellings. He indicated that when he looked east from the mansion, he could see the large office buildings across Kinderkamack Road, as well as the HVAC equipment on their roofs. He advised, however, that the HVAC equipment would not be visible from the facility because of the angle of viewing.

According to Mr. Wells, views from the west side of the facility would see mostly landscaping, but partial views of the Mansion through the foliage would be possible from the second floor. Mr. Wells' testimony lends credence to the belief that residents would likely have minimal views, if any, of the nearby homes, but would, instead see landscaping, Kinderkamack Road, and the office buildings on the east side of Kinderkamack Road. This testimony does not support prior testimony that the site is optimal for assisted living patients with Alzheimer's disease.

10. At the November 24, 2008 Special Meeting, the Board took testimony from its planning expert, Mr. Kain. Mr. Kain testified that the Applicant was requesting a D-1



use variance, a D-4 F.A.R. variance, and bulk variances. Mr. Kain indicated that it was his belief that this facility, as had been determined during the prior proceedings, that the use was inherently beneficial. The D-1 use variance is necessary because although this development has a “residential” character, the proposed use was quite different than the single-family residential use permitted in the R-1 Zone.

With respect to the F.A.R. variance, Mr. Kain advised that the Applicant was seeking to construct a building approximately 3,000 square feet larger than what would be permitted as-of-right on Lot 2.01, if the basement is excluded from the floor area and the access easement for Lot 2.01 is included in the lot area. He compared the F.A.R. to those of the office buildings across Kinderkamack Road, and recognized that the maximum F.A.R. in that zone was 35%. However, the proposed F.A.R. of the project was therefore more than the maximum F.A.R. provided in the R-1 Zone (or any other zone in the Borough).

Mr. Kain indicated that the Applicant’s proposal to deed restrict the site to prevent the future demolition of the Blauvelt Mansion could be relevant to the Board’s consideration of the F.A.R. variance, even though he was unaware of the Board ever granting a D-4 variance to any development exceeding an F.A.R. of 35% in any residential zone in Oradell. On the other hand, the Board’s 1995 resolution, which expressly prohibited any subdivision of the property for the purposes of further intensifying the Property (which in 1995 was intensified to allow a large principal building (single family residential home) in addition to the office use and existing residence in the Blauvelt Mansion), was significant and could be considered a countervailing point to the benefits of the deed restriction. Another detriment, according to Mr. Kain, was the lack of frontage for Lot 2.0, which was not common practice, and is typically discouraged from a planning perspective. Mr. Kain testified that there were many benefits as well as many

detriments to the application that needed to be balanced by the Board.

#### **IV. BOARD FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. WHEREAS, as a result of the site inspection, the testimony adduced at the public hearings, and the exhibits submitted, the Board makes the following findings of fact:

1. The premises are known as Block 805, Lot 2 on the Tax Assessor's Map of the Borough of Oradell and more commonly known as 699 Kinderkamack Road, Oradell, New Jersey, and are located in the R-1 residential zone;
2. The premises includes the right of access on adjacent Block 805, Lot 1. However, the access can be eliminated under certain circumstances and therefore it is necessary to provide for access over the subject premises assuming access over that adjacent lot may not always be available.
3. The Premises are approximately 4.34 acres in size and are improved with the historic Blauvelt Mansion and a smaller residential structure. There is a large grass area used as open space on the east side of the Premises. This open space area was preserved by the 1995 Resolution of the Board which granted the Wells Family its second use variance on the property.
4. Applicant has proposed to divide the Premises into two lots with areas of approximately 2.04 and 2.30 acres, respectively, and seeks to develop an assisted living facility limited to persons afflicted with Alzheimer's disease, dementia, and/or other degenerative mental impairments, on the easterly half of the Premises;
5. The Applicant's proposed use of the easterly half of the Premises is not permitted by the Zoning Code of the Borough of Oradell;
6. The westerly half of the Premises are improved with a single family home. There is also an architectural office in the Blauvelt Mansion approved by a prior use variance

from the Board;

7. The Premises are surrounded on two sides by single-family residential dwellings, on one side by a museum, and by Kinderkamack Road, with office buildings (in another zone) on the other side of the roadway;

8. The Premises are steeply sloped up from its lowest point along Kinderkamack Road;

9. The topography of the Property and the layout of the proposed development will provide few, if any views of nearby residential areas. Instead, external views will be limited to the office park across Kinderkamack Road, landscaping on the property, and partially obstructed views of the Blauvelt Mansion, which is not totally utilized as a residential building.

10. The Blauvelt Mansion is listed in the Historic Element Plan of the Borough of Oradell Master Plan as being worthy of conservation for its unique contribution to the neighborhood;

11. The development of the easterly half of the Premises with the Applicant's proposed development will require the re-grading of a significant portion of the lot and the export of approximately 18,000 cubic yards of soil;

12. The removal of soil will require between 900 and 1800 dump truck trips, depending on the size of the truck. If only 900 truck trips were required, the trucks utilized would be double the size of the standard dump trucks;

13. There is a large and growing pool of persons in Bergen County who are afflicted with Alzheimer's disease, dementia or other degenerative mental impairments.

14. There currently exist approximately 439 beds in nursing homes and

assisted living facilities in Bergen County that are devoted exclusively to persons afflicted with Alzheimer's disease, dementia or other degenerative mental impairments;

15. There exists a current need to expand the number of beds in nursing homes and assisted living facilities in Bergen County that are devoted exclusively to persons afflicted with Alzheimer's disease, dementia or other degenerative mental impairments because the number of persons who need or will need such facilities is currently estimated to be substantial;

16. There is a local and regional need for facilities that provide services to persons with Alzheimer's disease, dementia, and other forms of degenerative mental impairments;

17. There are assisted living facilities in the nearby area that provide services to persons with Alzheimer's disease, dementia, and other forms of degenerative mental impairments. The existing Care One facility on Kinderkamack Road in Oradell, close to the proposed project which is a 150 bed nursing home, includes residential beds for 30 such residents;

18. The Applicant proposes to develop a two-floor facility that is substantially in excess of the permitted lot coverage and F.A.R. required by the Borough of Oradell Zoning Code;

19. The facility proposed by the Applicant intrudes into the rear yard and front yard of the lot to be created on the easterly half of the Premises and requires bulk variances;

20. The subdivision of the Property proposed by the Applicant will result in a complete lack of frontage on a public street for the rear lot, Lot 2.0, which houses the historic Blauvelt Mansion, in violation of the Borough of Oradell Zoning Code (200 feet of frontage is

required) and the Municipal Land Use Law, N.J.S.A. 40:55D-35 (which requires any lot to abut a street).

21. The Premises and in particular the second principal building, and additional principal use, previously received use variance approval by resolution dated March 28, 1995 from the Board. A material condition of the prior approval was that the Premises remain an oversized 4.34 acres for the zone, that any further subdivision be prohibited, and that the easterly front yard lawn remain and be preserved as open space. A copy of the 1995 Resolution is attached hereto and made a part hereof as **Exhibit "A"**. The Applicant's proposed subdivision will reduce the lot size of the Blauvelt Mansion by nearly half and retain the non-permitted commercial uses ongoing in the Blauvelt Mansion that were previously approved based upon the size of the premises in its current configuration and retain the additional residence the subject of the 1995 Resolution;

22. Based on the topography of the Premises, the location for the proposed facility, the height and floor area of the proposed facility, the Board concludes that the structure is and will appear to be too massive when viewed from the property lines and out of character with the homes in the R-1 Zone;

23. The proposed subdivision of the Property without any frontage on a public road is an obvious attempt to increase the land area of Lot 2.01 by approximately 9,750 square feet over the size proposed for Lot 2.01 in the prior application filed by the Applicant. The Board finds that the attempt to increase the lot area of Lot 2.01 through legal gerrymandering was done solely for the purpose of decreasing the F.A.R. and coverage variances and at the expense of the basic need for every lot in the Borough to have some frontage on a public road, as required pursuant to N.J.S.A. 40:55D-35. Had the frontage for Lot 2.0 been provided, the F.A.R.

and lot coverage percentages for Lot 2.01 would have been approximately 42.4% and 48.2%, respectively.

24. The Applicant did offer to deed restrict the Property to prevent demolition of the Blauvelt Mansion. In fact, when the 1995 use variance was granted, the Applicant's predecessor (and current owner of the Property), offered to provide the Board with assurances that the Property would not be subdivided, yet it appeared 13 years later to change the previously agreed upon restrictions. The deed restrictions are an enforceable legal obligation in the conditions in the prior approval that precludes the subdivision of the Property and imposes open space preservation restrictions after an additional building and yet another use variance on the subject property was granted. Moreover, the owner of the property utilized and accepted the benefits of the 1995 use variance approval.

25. It would be appropriate for residents at an Alzheimer's disease and Dementia Care assisted living facility to be housed in a residential setting and be able to see other homes. The Applicant's facility will hardly provide such views from most of the bedrooms and common areas. No windows on the inner courtyard, the north and east side of the facility will even face residential structures. No resident at the facility, even those with windows facing south and west, will have unobstructed views of residential areas, despite the Applicant's testimony that such views were important. This is because of the topography and natural conditions of the property, including an existing row of trees and a steep hill along the south property line. In fact, the best hope for views would be a partially obstructed (through tree-cover), uphill view of the Blauvelt Mansion, which is currently used as a professional office (with home).

26. If the 12,070 square foot basement is included in the Floor Area, the

F.A.R. would be 50.2%. The Board recognizes that basements may be excluded from the calculation of the F.A.R., but notes that the Applicant has actually proposed functions for its facility in the “basement”, and were it not for the fact that the grade (which determines basements) covers part of the “basement”, this lower area would be a first floor.

B. WHEREAS, as a result of the site inspection, the testimony adduced at the public hearings, and the exhibits submitted, the Board makes the following conclusions of law:

1. The development proposed by the Applicant is substantially different than the development proposed in Board of Adjustment Case No. 733-07, which was denied by Resolution of the Board dated February 11, 2008. The Applicant has made reductions to the size of the building, including reduction in the number of rooms, elimination of a d(6) height variance, reductions in F.A.R., lot coverage, and building coverage, rear yard setback, and has changed both the lot configuration and the means of ingress/egress for Lot 2.0 that the Board deems to be substantial changes. Thus, even though the Applicant proposes the same use for the Property in generally the same building configuration, the Board concludes that the doctrine of *res judicata* does not apply and the Applicant was entitled to present its case as to why its development should have been approved.

2. The Applicant provided legal support for the proposition that the proposed use of an assisted living facility which treats dementia and Alzheimer’s patients is an inherently beneficial use. The Applicant has the burden to prove special reasons as the first prong of its use variance review, and satisfy the “positive criteria”. In the event that the use is determined to be an inherently beneficial use, the first prong involving the positive criteria would be satisfied, and therefore the application would focus on the negative criteria.

3. While the Applicant has indicated legal support for this proposition, there

is no published case on point as to whether a particular assisted living center for the dementia and Alzheimer's patients is an inherently beneficial use. The testimony has indicated that a Certificate of Need is required from the New Jersey Department of Health, which is relevant to this issue.

4. In attempting to analyze this, the Board recognizes that the case law clearly indicates, for example, that a hospital is an inherently beneficial use. Also, a nursing home is an inherently beneficial use. On the other hand, a senior citizen residential development alone (with senior citizens being defined as age 62 or older) would not be an inherently beneficial use. In the middle of the spectrum, however, is an assisted living facility. The proposed use appears to be developing a "specialization" under that use, since the proposed business based upon the testimony operates assisted living facilities (with various degrees of assistance) involving dementia and Alzheimer's patients.

The various levels of care for seniors therefore are as follows:

- (i) Senior citizen housing;
- (ii) Assisted living;
- (iii) Assisted living for certain specialized disabilities, such as dementia and Alzheimer's;
- (iv) Nursing home;
- (v) Hospital.

Upon reviewing the various degrees of care, going from seniors independently residing, which is more akin to a typical residential use, to seniors requiring care, the Board finds that the proposed facility is an inherently beneficial use as long as it is limited to Alzheimer's and dementia patients (as was the application presented to the Board). The Board makes no decision as to whether an assisted living facility not so limited to Alzheimer's and dementia patients would be



inherently beneficial.

5. Based on its decision in the prior application and the testimony offered by the Applicant in this application, the Board finds that the proposed assisted living facility for residents with Alzheimer's disease, dementia and other forms of degenerative neurological conditions is an inherently beneficial use. There are an increasing number of elderly citizens in Bergen County and an increasing number of persons who will be stricken with some sort of degenerative mental impairment who will require support services and professional care facilities. There are an insufficient number of beds in assisted living and nursing homes that are devoted to housing persons with degenerative mental impairments in Bergen County. The Board therefore concludes that there is a countywide need for facilities that will care for persons with degenerative mental impairments such as Alzheimer's disease and dementia. The very existence of such a facility, because of the clear need for additional beds for persons afflicted with degenerative mental impairments, will enhance the general welfare. Because this use will enhance the general welfare by its very existence, the proposed use is inherently beneficial.

6. The leading case on inherently beneficial uses is Sica v. Board of Adj. of Wall Twp., 127 N.J. 152 (1992). In such cases, an Applicant is not required to prove the absence of a negative impact on the public and the zone plan through an enhanced quality of proof. Instead, the Board is required to engage in a balancing of the competing interests at stake, where the Board is required to (1) identify the public interest at stake; (2) identify the detrimental effects; (3) seek to reduce the detrimental effects by imposing reasonable conditions; and (4) weigh the positive and negative criteria and determine whether the grant of the variance would cause a substantial detriment to the public good.

7. The Board finds that the public interest at stake is the provision of services

to persons afflicted with Alzheimer's disease, dementia, and other forms of degenerative mental impairments. This interest, while compelling, is not of the highest order of inherently beneficial uses; that category includes community residences for the developmentally disabled, community shelter for victims of domestic violence or child care centers. Id. at 165.

8. The Board further finds that the detrimental effects of the Applicant's proposed facility are the impacts to the adjacent residential neighborhoods, the traffic generated by the facility, the lighting generated by the facility, the excessive bulk of the facility as reflected in the FAR, building and lot coverage, various front and rear yard setbacks, landscaping in the parking lot, parking in the side yard, the need for a large amount of soil movement to re-grade the site to make it suitable for the Applicant's facility, the subdivision of the Property into two lots despite the prior limitations and restrictions of the Property's owner not to do so, the multiple principle uses that will be located on Lot 2.01, the lack of any frontage for Lot 2.0 (i.e., not even the 50 feet proposed in the first application where 200 foot minimum is required), the fact that this use is commercial in nature and will be developed in a single family residential zone, and the decreased aesthetic appeal of the neighborhood that will result from the development of this facility because the facility will partially block the view of the historic Blauvelt Mansion. The neighbors expressed the opinion that the project would have an adverse affect on property values.

9. Notwithstanding the detrimental impacts and negative factors listed above, the Board does not believe the traffic impact will be substantial, and the problem of visitors traveling north by going south and making a U-turn by East Drive is minor. Similarly, the Board also is of the opinion the additional lighting will have a minimum impact. However, it is the bulk and mass of the proposed building, the excess F.A.R., and the adverse effect on this

historical landmark that are the major detriments. The Board must also view the application in the perspective of the prior restrictions and limitations imposed by the Board's decision in 1995 with the acquiescence of the property owner.

10. The Applicant could reduce the size of the facility and reduce the impacts to the adjacent residential properties by reducing the size of the facility from 68 to 34 beds (which would allow it to maintain its preferred 17-bed neighborhoods with two neighborhoods), and eliminate the bulk and mass of one floor, which would enable the reduction in building size from two stories to one story, eliminate some of the lot area needed for parking (thereby reducing the impervious coverage), and reduce or eliminate several of the large variances needed by the Applicant. An election to do so would, in the Board's view, be a reasonable restriction or accommodation that would alleviate much of the physical and aesthetic impact of the non-permitted use in the R-1 Zone. This restriction has no bearing on how the facility is to be used or who the residents of the facility will be. Instead, it focuses on the size of the facility, which plays a major role in the Board's decision making process.

11. In its weighing the need for this type of facility and its inherently beneficial purpose against the impacts to the public good, the Board believes that the facility proposed by the Applicant is still simply too big and too intense for the Premises. This was also confirmed by the opinion of the Board's planner which the Board, in weighing the testimony of all planners, has accepted and adopted Mr. Kain's conclusions, particularly with respect to the F.A.R. and the lack of frontage for Lot 2.0. The Board finds that there was no testimony presented by a competent expert that the Applicant would need 68 beds to offer competent medical care. To the contrary, it appears that the Applicant requires 68 beds to turn some unspecified profit, despite its unwillingness to reveal any financial information regarding the cost

of care or the profit so projected. Economics and financial considerations do not require the Board to approve a facility the scope and scale the Applicant proposed in the R-1 Zone.

12. Furthermore, the need to locate the facility's parking lot in the side yard serves as a detrimental impact to the residential character of the zone, whereas the office buildings located across the street have located their parking areas in the rear yard away from view of the nearby residential zone as is required by the Zoning Code.

13. The development of the Premises with an assisted living facility would be in direct conflict with the goals set forth in the Borough of Oradell Master Plan to preserve the residential character of the zone, which the Board notes is of a single-family residential character that is defined by modest homes for small family groups rather than a corporate group home for up to 68 residents and their caregivers. It would also adversely affect the aesthetics of the historic Blauvelt Mansion. The Board has previously permitted professional office use in the Blauvelt Mansion, and also permitted an additional dwelling to be constructed, based upon the current size and development of the premises. The Board is not willing to accept the encroachments of the size proposed by the Applicant. However, the Board is willing to modify the existing property restrictions (i.e., prohibition of subdivision and open space restrictions), even though the Applicant's predecessor already received the benefits of that 1995 approval), if the project was reduced in scope and limited to one story.

14. The Board specifically finds that the Applicant's proposed assisted living is not a fundamentally residential use. Instead, the Board concludes that this facility is more akin to a large commercial institutional facility than it is to the purely residential attributes of the nearby single-family dwellings. The Board finds that the premises are no more suited, based on the negative impacts for this assisted living facility, than it would be for a large hotel or commercial facility. The Board recognizes that there are differences between hotels and assisted living facilities, such as traffic generation, but the Board is analogizing between the aspects of

quasi-residential/commercial uses that are common to both types of businesses. In sum, it is not the fact that persons will live in the facility, it is the facility that they will live in, based on the numerous detrimental effects, that makes the Applicant's proposal inappropriate for the premises. While different and smaller building configurations were discussed with the Applicant, it had no interest in pursuing other alternatives for the use.

15. The Board therefore concludes that the potential detrimental effects of this proposed two-story development on the Premises substantially outweigh the positive aspects of the proposed project, notwithstanding the fact that these types of facilities are needed and that an inherently beneficial use is involved and notwithstanding the Board's duty to make a reasonable accommodation for the proposed use. The Board concludes that granting a use variance pursuant to N.J.S.A. 40:55D-70(d) for the project, as proposed as a two story facility, would cause substantial detriment to the public good because of the intensity and bulk of the development proposed by the Applicant. The intense development is also evidenced by the number of substantial deviations of "bulk" requirements, which are more particularly discussed in Section V of this Resolution and will not be repeated. The Board also concludes that the site cannot accommodate the problems associated with the development of a facility in excess of the F.A.R., which is inextricably intertwined with the scope of the proposed use. Since there are no hardships that uniquely affect the Premises that would inhibit the development of a conforming project on the Premises, especially given the Board's latitude in prior use variance approvals on the property in recognition of its size, the Board also concludes that the granting of variances pursuant to N.J.S.A. 40:55D-70(c) would not advance the purposes of zoning nor would the benefits of such development substantially outweigh the detriments arising from the facility.

16. The F.A.R. calculated by the Applicant and as shown on Schedule "A" is based upon the upper two floors of the proposed building. It does not include the basement level, which opens to the eastern side of the premises along Kinderkamack Road, but is not visible from the western side of the premises. There may be an issue as to whether all or any part of that lower level should have been calculated as part of the floor area ratio or should have been excluded because it is considered basement. However, it is not necessary to resolve that issue or make that interpretation since the Board has determined that the F.A.R. as proposed by the Applicant is too large (even excluding the existence of the total lower level which it appears the Applicant has treated as a "basement" so that it is not included in the F.A.R.).

#### **V. FAIR HOUSING AMENDMENT ACT**

P. The Applicant's counsel has raised the issue of the Board's alleged obligation to approve the project under the Fair Housing Amendment Act, 42 U.S.C. Section 3604(f) ("FHAA"). Mr. Basralian, counsel for the Applicant, also advised the Board of its alleged obligation in his summation on the Application.

During the prior application brought by Care One, the Board extensively considered the applicability of the FHAA as well as the obligations imposed on the Board by the FHAA. The following is a summary of the Board's deliberations of the FHAA and its obligations thereunder within the context of the current application.

First, the Board recognizes its obligations, and the obligations of all persons, to the handicapped (including housing for the elderly for those having dementia and Alzheimer's). The Board has specifically determined that the proposed use is inherently beneficial (and for land use purposes, therefore satisfies the Applicant's burden to prove the "positive criteria" under the

MLUL).<sup>1</sup> The Board's duty and obligation to provide a "reasonable accommodation" to the elderly does not however mandate an obligation of the Board to approve a use variance under the circumstances of this case on the property in connection with the size and scope of the building and improvements proposed.

In reviewing whether the project constitutes an "unreasonable accommodation", the Board of Adjustment may meet any burden it might have (assuming the burden is indeed shifted to the Board) by showing that the development would "(1)'impos[e] undue financial and administrative burdens;' (2) 'impos[e] an 'undue hardship' on the Township;' or (3) 'requir[e] a fundamental alteration in the nature of the [zoning] program.'" Lapid-Laurel v. Zoning Board of Adjustment of Tp of Scotch Plains, 284 F.3d 442 (3<sup>rd</sup> Cir. 2002), *citing* Hovsons, Inc. v. Township of Brick, 89 F.3d 1096, 1104 (3<sup>rd</sup> Cir. 1996). It appears that the last factor would be most applicable in this case to substantiate a determination that the accommodation for the elderly proposed by the Applicant was not reasonable based upon the facility proposed in relation to the zoning ordinances and requirements applicable in the zone.

The Board recognizes that the Third Circuit has stated that there are two conflicting concerns that must be weighed in examining the "reasonable accommodations" requirement, "(1) effectuation of the statute's objectives of assisting the handicapped; and (2) the need to impose reasonable boundaries in accomplishing this purpose." Hovsons, supra, 89 F.3d at 1104; emphasis supplied. Thus, there is a balancing of the benefits and detriments, which is not unlike the review that is required in the granting of use variances (and the weighing of the positive and negative criteria) under the Municipal land Use Law. In this case, the "reasonable boundaries"

---

<sup>1</sup> Nothing contained herein shall be deemed to constitute an opinion or determination that an assisted living facility is itself an inherently beneficial use without the limitation that it serves dementia and Alzheimer's patients. The Board did not reach that conclusion, but only the conclusion that an assisted living facility limited to dementia and Alzheimer's patients only is an inherently beneficial use.



have been exceeded, especially given the existing restrictions on development, prohibition of the subdivision, and restrictions for open space.

Research has not disclosed any federal case where a land use board was required to relinquish prior property restrictions validly and lawfully imposed, especially where the benefit of the consideration for prior restrictions (approval of a second principal building on the property and second principal use) were already obtained and used for more than a decade.

The relevant case law acknowledges that this is a fact sensitive review. The Board has endorsed the proposition that it is appropriate to achieve equal opportunity for the elderly handicapped, but only where there are appropriate circumstances and subject to “reasonable boundaries”. Similarly, in Lapid-Laurel v. Zoning Board of Adjustment of Scotch Plains, supra, the Board also recognized that obligation. However, the board in that case held that Applicant had not sufficiently demonstrated why the design features of the proposed site plan were necessary to achieve that goal. Id.; 284 F. 3d at 460. The Board therefore rejected the site plan based upon objections to size of the facility, “both the building and number of residents”. Simply put, the board in that case found that the size would negatively impact the neighborhood in which it was to be constructed. Id. at 460-61. In that case, the requested accommodations were therefore determined to be unreasonable. Those same reasons apply to this case as well.

The Board does not consider that there exists a financial and administrative burden with respect to the project. It could be argued that there is a financial burden to the Borough because of emergency services to the proposed facility. However, the Applicant previously indicated that it was willing to provide private ambulance service to avoid any strain on emergency services by the need to provide ambulance service at least twice weekly to the facility. The Board did not have to make a decision with respect to whether to impose that requirement on the Applicant and

accept its offer to handle the cost of providing ambulance emergency services, as a result of the denial of the use variance. The Board therefore does not find a financial or administrative burden as a reason for the denial. This is similar to the Board's previous finding on this issue in the first application.

Secondly, the next issue is whether the Board has the right to avoid any obligation as a result of any undue hardship on the Borough. To direct traffic on Kinderkamack in a southerly direction, even when some of the traffic wanted to go in a northerly direction, would by necessity require the traffic seeking to go northbound to "turn around" some place and go north. This certainly might facilitate illegal or improper traffic turns on the adjacent East Drive (the residential road to the south of the subject property). The Board notes that based upon the traffic testimony, that there would not be that many cars that might be subject to this improper "u turn" (10 trips in the A.M. peak hours and 15 trips in the P.M. peak hours). While this is a negative impact for purposes of evaluation of the negative criteria, the Board does not find this alone should be considered a hardship. While this is a detriment, by itself it is not substantial enough to outweigh the beneficial affect of providing elderly housing for those suffering from dementia and Alzheimer's disease.

There are also negative impacts on the blocking of the view of the Blauvelt Mansion. While there may be a hardship, the Board does not think that issue also is sufficient alone to deny the proposed elderly housing. However, aesthetics is an important consideration and was indeed one of the reasons why the Board previously granted the owner of the subject property a use variance in 1995 to add a second principal use (residence) to the property.

The "undue hardship" really is more of a function of the third requirement of showing fundamental alterations of the nature of the zoning scheme. In this case, the "hardship", in terms

of the effect on the zoning, is substantial.

In this particular case, the Board carefully reviewed (exclusive of the use variance issues) all variances and relief sought with respect to the bulk variances. If the variances attributed to the existing Blauvelt Mansion and existing non-conformities and conditions are excluded, there are really five new variances proposed which all bear on the size, scope, and intensity of the facility. Those five variances deal directly with the size, scope, and intensity of the project. For example, the following variances are implicated:

<u>Variance</u>	<u>Requirement</u>	<u>Proposed on Plans</u>	<u>Deviation</u>	<u>Percentage of Deviation</u>
1. Lot Coverage	40%	43.5% <sup>2</sup>	3.5% +	8.75 %
2. FAR	33%	38.2% <sup>3</sup>	5.2% +	15.8 %
3. Adjacent Parking Spaces (in the side yard)	10 spaces	14 spaces	4+	40 % (not located in rear yard)
4. Front Yard Setback	35 feet	30 feet	5.0 feet	14.3 %
5. Rear Yard Setback	48.75 feet	35 feet	12.75 feet	26.1%

These variances are not minor deviations from the requirements, but are substantial. There is not simply one substantial deviation. There are multiple substantial deviations as summarized above.

The Applicant argued that if the F.A.R. of the subdivided lots were to be combined, the total floor area would be less than the maximum permitted. The Board disagrees with this

<sup>2</sup> This figure relies upon the lot area calculations provided by the Applicant and includes the area reserved for the access driveway to the rear lot that houses the Blauvelt Mansion. If the lot area that is occupied by the driveway that services the rear lot is excluded, the lot coverage is 48.2%

<sup>3</sup> This figure relies upon the lot area calculations provided by the Applicant and does not include the area reserved for the access driveway to the rear lot that houses the Blauvelt Mansion. If the lot area that is occupied by the driveway that services the rear lot is excluded, the F.A.R. is 42.4%. Additionally, if the basement were to be included in the F.A.R., that value would increase to 50.3%.

methodology, as the Applicant is seeking a subdivision of the Property to create two smaller lots. There is no basis in any case law presented to the Board to allow consideration of the total F.A.R. for the entirety of the un-subdivided lot after the partition of the Property is to occur. The assisted living facility will have an F.A.R. in excess of the 33% permitted in the R-1 zone on the 2.3 acre lot it is to occupy. Even if the Board applied the highest F.A.R. applicable in any zone in the Borough of Oradell, the assisted living facility would still be too large (there is no zone where the F.A.R. maximum exceeds 35%).

Moreover, while the Board finds that technically, the F.A.R. of the "lot" the assisted living facility is to occupy is 38.2% (in excess of the 33% maximum in the R-1 Zone and the 35% maximum in other zones), in real terms, the F.A.R. of that facility is about 42.4%, as the lot should be considered at a minimum with a 50 foot frontage (where 200 feet is required), about 9,750 square feet less than its proposed lot area. To calculate an F.A.R. with no street frontage to the rear lot artificially and unreasonably lowers the F.A.R. of the front lot. By way of example, the chart attached hereto as **Exhibit "B"** reflects various means of calculating the F.A.R.

While the Board is willing to grant a reasonable accommodation to the Applicant in relaxing the use restrictions on the Property, it is simply unwilling abandon its Zoning Ordinance wholesale. As stated in Bryant Woods Inn, Inc. v. Howard County, et al, 124 F. 3<sup>rd</sup> 597(4<sup>th</sup> Cir 1997),

In determining whether the reasonableness requirement has been met, the Court may consider as fact the extent to which the accommodation would undermine the legitimate purpose and effects of existing zoning regulations and the benefits the accommodations would provide to the handicapped.

As the Fourth Circuit held, the "equal opportunity" requirement mandates not only the level of

benefit that must be sought by a reasonable accommodation but also provides a limitation on what is required. The FHA does not require accommodations that increase the benefit to a handicapped person above that provided to a non-handicapped person with respect to matters unrelated to the handicapped. As the United States Supreme Court noted in Southeastern Community College v. Davis, 442 U.S. 397 (1979), the requirement of “even-handed treatment of handicapped persons” does not include affirmative action by which handicapped persons would have a greater opportunity than non-handicapped persons. Davis, 442 U.S. at 410-411. Congress only prescribed that local governments make reasonable accommodation to afford persons with handicaps an equal opportunity to use and enjoy housing. See also, Bryant Woods, supra, 124 F.3<sup>rd</sup>. at 603, citing 42 U.S.C. Section 3604(f)(3)(b).

Consideration of the relevant standards in this light causes the inquiry of whether a non-handicapped person would be entitled to live in a facility of this substantial density in buildings with smaller setbacks and a larger building coverage, lot coverage and Floor Area Ratio, than in the rest of that zone, with parking spaces in a continuous row which exceeds the maximum number, in the side yard of the property, and with a height greater than almost all residential buildings in the zone. This case did not present a project that had substantially conforming bulk requirements so that there was substantial compliance with the zoning ordinances. As stated, the non-compliance with most of the “bulk” zoning ordinances was substantial. Considering the expressed goals in the prior master plans of the Borough of preserving the residential character of the R-1 Zone, as testified by the Board’s planner, the proposed project was simply too much of a deviation. The bulk regulations were substantially exceeded. The bulk of the project is simply too large.

When comparing the proposed project to previous elderly housing project approved in the

Borough, the Board considered its prior decision in the resolution for Edron (Calendar No. 443) and Mavco (Calendar No. 442), as well as its decision in the resolution for Care One (Calendar No. 733) (copies of those resolutions are attached as **Exhibits “C”, “D” and “E”**, respectively. The Applicant’s planner did not address the fact that there is no evidence or indication that this is a Board that has or does discriminate in any way with housing for the elderly. In fact, the Board had approved both elderly housing projects previously presented to it (exclusive of the current Applicant), one of which has been constructed.

Additionally, there was a need to review the size of the building in the subject application to ascertain the extent of any “over building” and review the size of the project in the R-1 Zone. The Care One facility (constructed pursuant to the Edron approval) included approval of a 56,608 square foot building on a 5.17 acre parcel. The Mavco project (not constructed) had an existing 62,168 square foot building on a 5.37 acre project (that was proposed to be converted). However, the current proposal is for a 50,283 square foot project building (inclusive of basement), but on only 2.3 acres (less than half the size of the other two approved elderly housing projects). Simply put, the building and its scope are still too big. This is obvious when considering the two elderly housing projects previously approved in the Borough. This is also evidenced by the large FAR variance proposed, compared to the substantially lower FAR of the other two senior housing projects previously approved by this Board.

The Board acknowledges that the “bedrooms” may be larger for this assisted living facility. However, it should be noted that both of the other projects approved (Edron and Mavco) each did have 30 residential beds which were similar to the assisted living components, and therefore did not count as the typical “long term care” nursing home rooms. The Board still has to be concerned with whether the proposed building is too large for this residential zone, even if

the use inside is inherently beneficial and a public benefit and residential in nature. If the demand and need requires larger living units, that does not mean the building has to be increased in size to accommodate the number of beds for which approval is sought. It means that less beds must be proposed to fit within an appropriately sized building. For example, the Applicant did not indicate it was willing to reduce the size of the building (which might have reduced the number of bedrooms). The Applicant did not propose a number of group homes similar in appearance to a residential home that each had a number of residents (similar to the group homes like Potomac Homes which Applicant's witness referred to).

It is clear the proposed 38,213 square foot project (50,283 square feet when the basement is included), represents too large a project when compared to the two elderly housing projects approved by the Board (putting aside the issue of the numerous bulk variances required). When considering the scope of the project, the fact that the proposed building substantially exceeded building coverage, impervious coverage, and the floor area ratio, the building itself was simply too large. When you add longer rows of parking, the building and improvements were too much out of scale with the homes in the R-1 Zone. Again, this was not a case where the developer proposed group homes which may have better fit based upon their appearance and similarities to a single-family home. The Applicant proposed a large two-story building which substantially exceeded not only what was permitted in the R-1 Zone, but also what would be permitted in other zones (as for example when you review the F.A.R. requirements in all zones). The proposed structure itself is too massive a building at that location. The magnitude is exhibited by the number of required variances. The proposed project would cause one of the largest soil movement permits issued, which also has an adverse impact on the neighborhood. While the Board acknowledges the reduction in scope of the project proposed from the first application, the

modified project is still too large.

## VII. MODIFICATION OF CONDITIONS OF 1995 USE VARIANCE APPROVAL

Q. It is noteworthy that the family of the owner of the subject property, Jeff and Bonnie Wells, was previously granted a use variance for construction of the second single-family dwelling on an oversized lot by the 1995 Resolution previously referred to. There was also a prior use variance to permit the office use (architectural services). Significantly, in its 1995 Resolution, the Board specifically approved that variance on the following conditions:

Material Condition: A **material** and **substantial** reason for the approval herein is the size of the Premises. It is a condition of the approval that the Premises remain at approximately 4.3 acres. Any application for reduction of the size of the property shall be heard by the Board of Adjustment as a modification of the use variance granted hereunder.

[1995 Resolution, par. 4, p. 9; emphasis supplied]

Thus, in the review of the current application, the Board is confronted with its prior decision for the use variance and also the importance of the facts in the prior approval that “the location of the building will be placed in conformity with the existing Oradell Zoning Code”. See 1995 Resolution, p.5, par. E. The Board at the time specifically held in subparagraph H of that 1995 Resolution (p. 6) as follows:

The Blauvelt Mansion itself has a substantial amount of vacant land in front of it and surrounding it. It is in the best interests of the Borough to maintain same and avoid anything that would adversely affect the view or aesthetics of the Blauvelt Mansion.

[Emphasis supplied]

Thus, the Board had already provided a substantial benefit to the property owner when it approved the prior resolution approving the use variance for the second building and second use. It also previously approved for the property owner a variance permitting the office use with the residential use in the Blauvelt Mansion.



The subject application therefore involves the substantial reduction in the size of the property and requires a modification of the 1995 use variance approval previously granted. One of the major reasons for granting the prior use variance permitting the second dwelling and additional principal use was the existence of the open space in front of the Blauvelt mansion. However, the Applicant now proposes to eliminate that benefit, which was the substantial reason in the Board's prior approval. That second dwelling has already been constructed, and the owner of the property has received the benefits of the prior approval since 1995. Now, the project proposes a subdivision which creates a rear lot (on the westerly side of the property), with no street frontage, and which constitutes a landlocked parcel with the only access being an easement.

In the first application, at least a flag lot was proposed, where at least there was a 50 foot frontage of the rear lot on Kinderkamack Road. Flag lots are generally disfavored from a planning standpoint. Now, in an obvious attempt by the Applicant to reduce the F.A.R. variance, it has taken the area of the right-of-way originally proposed in the first application (the flag post) and added it to the area of proposed Lot 2.01 so as to increase the lot area, while therefore simultaneously decreasing the FAR variance. Based upon the project as proposed, the failure of the Applicant to prove the positive and negative criteria necessary to modify that prior use variance, and the substantial affect on the views and aesthetics, the Board is not willing to modify the prior use variance application based upon the building and layout as proposed. This is an independent, substantial and major reason for denial, irrespective of the Board's balancing of the benefits of this inherently beneficial use with the detrimental impact as previously stated.

\* \* \*

NOW, THEREFORE, BE IT RESOLVED, that the Board therefore determines that the application of Blauvelt Associates, LLC for a two-story 68 bed assisted living facility limited to dementia and Alzheimer's patients is hereby DENIED.

BE IT FURTHER RESOLVED, that as part of that denial motion, there was a simultaneous motion to approve a smaller project with the size and bulk of the two-story building to be reduced to a one-story building with 34 beds. This part of the motion included approval to modify the conditions set forth in the prior Resolution dated March 28, 1995, as well as grant a major subdivision of Block 805, Lot 2 into two lots as shown on Exhibit A-5, with any other bulk and use variances required by the Applicant's proposal for the construction and use of a facility within the R-1 zone to function as a one-story 34-bed assisted living facility for residents with Alzheimer's disease, dementia and other related degenerative mental impairments. This part of the motion contained the requirement that the Applicant eliminate the second story of the assisted living facility and reduce the number of beds and submit an amended site plan depicting said reduced plan, which plan would depict the one-story building, decreased number of parking spaces, including in the side yard, decreased impervious coverage, with other conditions as set forth in the record, was approved.

The Board has denied the application of Blauvelt Associates, LLC based upon the failure of the applicant to prove that the negative criteria has been satisfied and that the detrimental impact of the project outweighs the benefits of the project as currently proposed. The Board is satisfied, as previously determined, that this an inherently beneficial use and one that is a public benefit for not only the Borough but the region. The Board therefore has added a condition to its denial that it does approve of a modified project, notwithstanding the 1995 restrictions on

subdivision and requirement for open space preservation, but only based upon the following occurring:

1. The second floor would be eliminated to reduce the mass and bulk of project and would be limited to 34 rooms;
2. The parking area would be decreased in size because of the reduction in the floor area would have a reduction in the number of spaces required;
3. The building with only one floor could be made more architecturally compatible with the historic Blauvelt Mansion in the rear;
4. Although traffic was not as substantial a concern as testified by the applicant's traffic expert, it would be more substantial than the permitted use of single-family homes. Even ignoring the traffic impact, cars traveling in the northerly direction would make a "right turn only" out of the entrance on Kinderkamack Road and then have to make a U-turn at East Gate Drive. This need to turn in residential streets adjacent to the property would therefore be slightly diminished by reducing the size of project;
5. The scenic view of the historic Blauvelt Mansion would be less affected;
6. The impact on the adjacent residential homes would be diminished.

Therefore, the Board does approve of the project with the aforesaid conditions. The second floor of the building would be eliminated as stated above, and the parking area reduced. This would be specifically subject to an amended use variance and site plan approval wherein the applicant would show the changes to the project, the modification to the bulk table (i.e., representing a decrease in the FAR and impervious coverage by the reduction in the parking lot because of the reduction in the number of parking spaces, etc.), and revised architectural plans for the first floor, including necessary elevations. Those revisions would be specifically be subject to the approval of the Board, but said hearings would be accomplished on an expedited basis by way of a special meeting (or meetings).

MOVED BY: Mr. Michelman

SECONDED BY: Mr. Kuller

	FOR	AGAINST	ABSTAIN	ABSENT	NOT QUALIFIED TO VOTE
Joseph T. Polyniak, Chairman					X
Raymond Stubblebine, Vice Chairman	X				
Steven Lang					X
Marvin Michelman	X				
James Sattely		X			
Richard Buff		X			
Richard Kuller	X				
Rita Walker, Alt. #1	X				
Ed Beslow, Alt. #2	X				

Dated: November 24, 2008

The motion to deny the application as presented but grant conditional approval of a one story, 34-bed assisted living facility was approved by a vote of five in favor of approval of the motion to approve the application and two against approval of the application.

A Resolution memorializing the denial of the application adopted at the meeting after the verbal vote (as set forth above), was adopted by the following vote:

MOVED BY:  
 SECONDED BY:

	FOR	AGAINST	ABSTAIN	ABSENT	NOT QUALIFIED TO VOTE
Joseph T. Polyniak, Chairman					X
Raymond Stubblebine, Vice Chairman					
Steven Lang					X
Marvin Michelman					
Linda Besink*					X
Richard Buff					X
Marc Potolsky*					X
Richard Kuller					
Ed Beslow					

Dated: February 17, 2009

\* Note: The term of Board members James Sattely and Rita Walker ended on December 31, 2008, and new Board members, Linda Besink and Marc Potolsky, were appointed in their place who were not qualified to vote on the memorializing Resolution.

ORADELL BOARD OF ADJUSTMENT

BY: \_\_\_\_\_  
 Raymond Stubblebine, Acting Chairperson

CERTIFIED TO BE A TRUE COPY

BY: \_\_\_\_\_  
 \_\_\_\_\_, Secretary

# EXHIBIT “A”

205/2

Variance for Construction  
of Second Single Family  
Dwelling on Oversized Lot  
of 4.34 Acres

RESOLUTION

ORADELL BOARD OF ADJUSTMENT

APPLICATION OF RAYMOND R. WELLS and BETTY L. WELLS  
CALENDAR NO. 493

WHEREAS, Raymond R. Wells and Betty L. Wells (hereinafter collectively referred to as the "Applicant") applied for construction of a second single family dwelling; and

WHEREAS, the premises are known and designated on the Tax Map of the Borough of Oradell as Block 805, Lot 2, and are more commonly known as 699 Kinderkamack Road, Oradell, New Jersey, and also sometimes referred to as the "Blauvelt Estate", with the principal building thereon sometimes referred to as the Blauvelt Mansion (hereinafter the "Premises"), which Premises are located in the R-1 Residential Zone; and

WHEREAS, after due notice and publication, the matter was called for a public hearing on January 24, 1995 and February 28, 1995, at which time the Applicant was represented by Thomas M. Wells, Esq.; and

WHEREAS, pursuant to the Zoning Code of the Borough of Oradell, one principal residential structure per lot is permitted and the proposed dwelling would constitute a second residential structure on the same lot, contrary to the uses permitted in the R-1 Single Family District Zone; and

WHEREAS, the proposed structure contains an area of 3,552

square feet and pursuant to the Zoning Code, Section 240-8.7(a), if the second building was considered an accessory building, it may not exceed 600 square feet in size; and

WHEREAS, pursuant to the Zoning Code, Section 240-7.10(a), the height of an accessory building if the proposed structure were deemed accessory, may not exceed 15 feet, but the proposed structure does not exceed 29 feet in height; and

WHEREAS, the proposed single family dwelling constitutes a second principal structure which requires a use variance pursuant to N.J.S.A. 40:55D-70(d), irrespective of whether the proposed building could be considered an accessory use; and

WHEREAS, pursuant to the Zoning Ordinance, Section 240-7.5(A)(2), accessory uses shall be as follows:

(a) Professional offices or studios of a persons [sic] engaged in a professional occupation as defined in this Chapter. The premises must be occupied as the principal dwelling place of the person engaged in this accessory use. No exterior sign for display shall be allowed for said use except as permitted by this Chapter; [Emphasis supplied] and

WHEREAS, because of the requirement that the premises (i.e., main building), must be occupied as a principal dwelling place of the person engaged in the accessory use, the proposed structure would not be considered "accessory" within the meaning of the Zoning Code; and

WHEREAS, the Applicant does not appear to have established an accessory use since the existing main building would have to be



used as his principal dwelling which, according to the Applicant, is not the case, since the accessory building will be the Applicant's part-time New Jersey residence; and

WHEREAS, there is also an issue as to whether the second building is an "accessory cottage" which is "incidental" to the principal structure; and

WHEREAS, the second dwelling does not appear to be "incidental" to the principal structure, except for the portion of same relating to the garage, and then only to the extent the main building utilizes the garage; and

WHEREAS, because a second dwelling is to be established, this also constitutes an increase in density, which may also constitute a variance required under N.J.S.A. 40:55D-70(d)(5), where the Applicant exceeds the number of dwellings permitted per the area of land permitted in this R-1 Zone; and

WHEREAS, accordingly, a "D" variance is required since the application involves a use variance (because the proposal is for two single family dwellings in a zone which only permits one), and a density variance under N.J.S.A. 40:55D-70(d)(5) (because of the increase in density as set forth above); and

WHEREAS, the Property has been previously the subject of an application for approval for a professional-home office use in the existing structure known as the Blauvelt Mansion, which was the residence of the Applicant and also the site of his architectural business as more particularly set forth in the Resolution attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, it is the intent of the Applicant to retire, with his son, Jeffrey Wells, to move to the Blauvelt Mansion as his principal residence and operate the family architectural business, and with the Applicant to reside on a part-time basis in the proposed new structure; and

WHEREAS, the Applicant wishes to maintain the Blauvelt Estate in its original condition and maintain the Blauvelt Mansion on the Premises as currently constituted, but with the proposed second dwelling to be added; and

WHEREAS, the Blauvelt Mansion is an historic landmark; and

WHEREAS, the Applicant has entertained various proposals in connection with a contemplated sale of the Premises, many of which involved a subdivision of the Property and/or demolition of the Blauvelt Mansion; and

WHEREAS, it is the Applicant's desire to keep the Blauvelt Mansion in the Applicant's Family and avoid a subdivision of same or a reduction in the size of the Premises; and

WHEREAS, Mr. Jeffrey Wells, the Applicant's architect, testified in favor of the Applicant in connection with the application; and

WHEREAS, the members of the Board discussed with the Applicant alternative plans for construction of the single family dwelling so as to avoid the need for a variance, but all such alternatives involved decreasing the size of the Premises by way of a subdivision so as to permit a single family dwelling on a newly created lot; and

WHEREAS, the Board is making its determination on the use variance application substantially based on the size of the land as being 4.34 acres, and the Board's decision might be substantially modified if it were not for the representation that the size of the lot at approximately 4.34 acres will remain unchanged if the second dwelling is approved; and

WHEREAS, the Board has carefully considered the exhibits introduced into evidence, including the Plans submitted, and the testimony of the Applicant; and

WHEREAS, the Oradell Board of Adjustment, after considering the testimony of the Applicant's representatives and the witnesses, hereby makes the following findings of fact:

A. The Applicant, Raymond R. Wells and Betty L. Wells, are the owners of the Premises commonly known as 699 Kinderkamack Road in Oradell, which Premises are known as Block 805, Lot 2.

B. The Applicant proposed to construct a separate single family dwelling with garage.

C. No adjacent property owners or other members of the public or interested parties objected to the application. Several adjacent property owners were in favor of the application.

D. The construction of a second single family dwelling will have a minimum impact on the adjacent properties, given the size of the lot and the placement of the dwelling as shown on the Plans and its relationship to the main building.

E. The location of the building will be placed in conformity with the existing Oradell Zoning Code, except for the

variances required herein.

F. The Blauvelt Mansion is an historic structure, even if not officially registered as an historic landmark, and is one of the predominant landmarks in not only the Borough but the River Dell-Pascack Valley Region, the County of Bergen, and the State of New Jersey.

G. The Applicant, were they to choose to subdivide the property, could have obtained a totally conforming subdivision and would still be entitled to build a conforming building on the newly created lot without any variance or waivers.

H. The Blauvelt Mansion itself has a substantial amount of vacant land in front of it and surrounding it. It is in the best interests of the Borough to maintain same and avoid anything that would adversely affect the view or aesthetics of the Blauvelt Mansion.

I. The granting the variance will likely extend the existence of this landmark.

J. The promotion of the public health, safety morals and welfare is an important goal of zoning, and the approval of the application promotes that goal.

K. The promotion of a desirable visual environment and the conservation of historic sites and districts are special reasons which justify the granting of the application. The general public good is served because the second dwelling can be constructed without the necessity of "carving up" the property, and while preserving the Blauvelt Mansion.

L. In the R-1 Zone, a minimum required lot of 18,750 square feet is necessary. However, the premises consists of approximately 4.3 acres, or 189,029 square feet, more than 10 times the size of the minimum required lot area. This factor was critical in the Board's decision

M. While the maximum permitted building coverage for the property is 25%, the existing building coverage is only 2.2% and therefore the property is underutilized.

N. The required front yard setback is currently 35 feet. However, the existing front yard setback of this Premises is approximately 285 feet.

O. The size of the Premises is more than adequate to maintain two separate residential structures and there will be no impact or adverse affect in the R-1 Zone or on the surrounding properties.

P. A single family dwelling that will be constructed will be the same architectural style and will "match" the existing Blauvelt Mansion. This will also be a benefit to the Borough of Oradell.

Q. The Municipal Land Use Law, N.J.S.A. 40:55D-2(j) indicates that the intent and purpose of the Act is "to promote the conservation of historic sites\*\*\*". The maintenance of the Blauvelt Estate given the size of the property and despite the developmental pressure satisfies that goal.

R. The garages will be added to the site where none previously existed and therefore may be used for the benefit of the

main structure.

S. There is virtually no negative impact by the granting of the variance.

T. In weighing the benefits of permitting the variance for the construction of the second dwelling against the detriments, the benefits substantially outweigh any detriment because of the oversized property and underutilization of same, and historic status of the building and property.

U. The Applicant's request for a variance can be granted without detriment to the Zone Plan and the Zoning Ordinance of the Borough of Oradell. Said variance is not detrimental to the public, providing however that there is compliance with conditions of this Resolution.

NOW THEREFORE, BE IT RESOLVED that the Application of Raymond R. Wells and Betty L. Wells, to construct an additional single family dwelling, be and the same hereby is conditionally approved as follows:

1. Dwelling: The second dwelling shall be constructed so as not to exceed 3,552 square feet and shall not exceed 29 feet in height, as shown on the Plans.
2. Location and Type: The dwelling shall be constructed as shown on the plans and as testified by the Applicant's architect.
3. Compliance with Other Conditions: The conditions of the prior Resolution shall remain in full force and effect and are incorporated herein by reference. The Applicant shall comply with same.

4. Material Condition: A material and substantial reason for the approval herein is the size of the Premises. It is a condition of the approval that the Premises remain at approximately 4.3 acres. Any application for reduction of the size of the property shall be heard by the Board of Adjustment as a modification of the use variance granted hereunder.

5. Legal and Engineering Fees: The Applicant shall be responsible for all legal and engineering fees of the Board of Adjustment.

6. Other Fees: All additional fees, if any, required by the Borough Ordinances shall be paid.

7. Reliance by Board on Testimony and Application: This approval is specifically granted based upon the testimony of the Applicants, their witnesses, the exhibits, and the application, as amended, submitted to the Board of Adjustment, all of which have been relied upon by the Board of Adjustment.

8. Compliance with Ordinance: Except for the variance granted herein, the Applicant shall comply with all other provisions of the Zoning Code of the Borough of Oradell.

9. Compliance with Laws: The Applicant shall comply with all Borough Ordinances, and any and all State and Federal laws and applicable regulations.

10. Non-Severability of Conditions: The relief granted to the Applicant is specifically made subject to the conditions referred to herein. In the event any condition is held to be invalid, unenforceable, or unlawful, the entire variance shall be

unenforceable. It is the intent of the Board that the variance not be approved if any condition is invalid, and that the conditions are not severable from any variances or relief granted herein.

11. Appeal Period: The Applicant has been advised that there is an appeal period for the relief granted herein for a period of forty-five (45) days from the date of publication of notice of the relief granted pursuant to this Resolution in a newspaper of general circulation approved by the Board of Adjustment. Accordingly, any work or construction done prior to the expiration of the appeal period is accomplished at the sole risk of the Applicant.

Said Resolution was adopted by the following vote at the meeting prior to adoption of the memorializing Resolution:

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>
Rubin Camins, Chairman	_____	<u>  X  </u>	_____	_____
Joseph Polyniak, Vice Chairman	<u>  X  </u>	_____	_____	_____
Barbara Sue Herrmann, Secretary	<u>  X  </u>	_____	_____	_____
Stanley Apolant,	_____	_____	_____	_____
Nancy Shelley	_____	_____	_____	<u>  X  </u>
Raymond Eckel	<u>  X  </u>	_____	_____	_____
Stephen Depken	_____	_____	_____	_____
Sonia Hanlon, Alt.	<u>  X  </u>	_____	_____	_____
Raymond Stubblebine, Alt.	<u>  X  </u>	_____	_____	_____



Dated: February 28, 1995

\* \* \*

Said Resolution was memorialized at the meeting after the Resolution was adopted (as set forth above), by the following vote:

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified to Vote Because of Vote Against Resolution at Original meeting</u>
Rubin Camins, Chairman	_____	_____	_____	_____	_____
Joseph Polyniak, Vice Chairman	<u>X</u>	_____	_____	_____	_____
Barbara Sue Herrmann, Secretary	<u>X</u>	_____	_____	_____	_____
Stanley Apolant	_____	_____	_____	_____	_____
Nancy Shelley	_____	_____	_____	_____	_____
Raymond Eckel	<u>X</u>	_____	_____	_____	_____
Stephen Depken	_____	_____	_____	_____	_____
Sonia Hanlon, Alt.	<u>X</u>	_____	_____	_____	_____
Raymond Stubblebine, Alt.	<u>X</u>	_____	_____	_____	_____

ORADELL BOARD OF ADJUSTMENT

BY: *Rubin Camins*  
Rubin Camins, Chairman

CERTIFIED TO BE A TRUE COPY

BY: *Barbara Sue Herrmann*  
Barbara Sue Herrmann,  
Secretary

Dated: March 28, 1995

# EXHIBIT “B”

**ORADELL ZONING BOARD OF ADJUSTMENT**

**APPLICATION OF BLAUVELT ASSOCIATES, LLC  
CAL #753-08**

F.A.R. Calculations for Lot 2.01 utilizing basement, approved 1 story building  
and easement area for Lot 2.0

**A. Area of Lot 2.01 As Shown on Plans (99,972 s.f.)**

		Floor Area	Lot Area	F.A.R.
1.a	Floor Area as shown on plans	38,213 ft.	99,972 s.f.	38.2%
1.b	Building inclusive of Basement (12,070 s.f.)	50,283 ft.	99,972 s.f.	50.3%

2.a	1 Story Building (w/o basement)	19,106.5 ft.	99,972 s.f.	19.1%
2.b	1 Story Building inclusive of basement	31,176.5 ft.	99,972 s.f.	31.2%

**B. Area of Lot 2.01 (90,222 s.f.) Excluding Estimated Easement Area for Lot 2.0 Access Easement of 9,750 s.f. (195' x 50')<sup>1</sup>**

		Floor Area	Lot Area	F.A.R.
1.a	Floor Area as shown on plans	38,213 ft.	90,222 s.f.	42.4%
1.b	Building inclusive of Basement	50,283 ft.	90,222 s.f.	55.7%

2.a	1 Story Building (w/o basement)	19,106.5 ft.	90,222 s.f.	21.2%
2.b	1 Story Building inclusive of basement	31,176.5 ft.	90,222 s.f.	34.6%

<sup>1</sup> For the purposes of this calculation, the area of the easement was calculated using the straightline dimensions of the access driveway and does not include the triangular shaped piece on the north side of the easement near the Property's frontage on Kinderkamack Road. The square footage was calculated by multiplying the length (195 feet) by the width (50 feet) to arrive at an area of 9,750 s.f.

When the easement area of 9,750 s.f. is subtracted from the lot area for Lot 2.01 shown on the site plan, of 99,972 s.f., the result is a lot area of 90,222 s.f.

# EXHIBIT “C”

807/4

RESOLUTION  
ZONING BOARD OF THE BOROUGH OF ORADELL  
CALENDAR NO. 443  
EDRON DEVELOPMENT CORP.

WHEREAS, Edron Development Corp., Inc., has applied for a use variance to permit construction of a nursing home and health care facility on premises known as 600 Kinderkamack Road (Block 807, Lot 4) Oradell, New Jersey; and

WHEREAS, after due notice and publication the matter was called for a hearing on February 25, 1992, and continued on March 24, April 28 and May 26, 1992 during which time the Board heard testimony from the following witnesses, all of whom were duly sworn:

John Philips, who is a registered architect in the State of New Jersey and several other states, stated that the building will be a 63,000 square feet, two story facility with 150 beds; consisting of 30 resident beds and 120 long term beds. The ground floor will have a service area, kitchen, 30 beds and offices. The ground floor will also have an adult day care program, which will accommodate 27 day care patients. No beds are planned for the adult day care center. The second floor will have long term skilled nursing care. He also stated that every 60 beds require a nurses station. While no site plan application is being proposed at present, 126 parking spaces and a laundry facility off the rear of the building are proposed for the site. As stipulated by the Applicant, Mr. Philips testified that the nursing home would not

provide any drug or alcohol treatment services, or facilities for treatment of AIDS patients or mental patients.

Craig Wilcox, who is an employee of Mediplex, the proposed operator of the nursing home, also an employee of G-WZ Development Group, stated that he is involved with the design of the building and hiring of the general contractor. He stated that the cost of the building will be close to 6.5 million dollars. Mediplex is a publicly traded corporation and has 45 million dollars. As a result, Mediplex will not need outside financing. He also stated that they will have medical gases and oxygen piped in, as well as ventilation beds. Hal Simoff was qualified to testify as a traffic engineer. Mr. Simoff stated that he prepared a traffic and parking analysis report which was marked into evidence as Exhibit A-11. He stated that he reviewed a proposed Boswell Engineering site plan and has analyzed the impact that a nursing home will have. Mr. Simoff stated that 29 cars would be entering during peak morning hours and 26 cars exiting during peak afternoon hours. There is less traffic between 7:00 a.m. and 7:45 a.m., than between 7:45 a.m. and 8:45 a.m. Since the nursing home hours are from 7:00 a.m. to 3:00 p.m. they will not conflict with the traffic. He explained that from a traffic point of view the nursing home would generate traffic during off peak hours. He then stated that there will be a driveway and road widening along the site. The driveway at the north end will be right turn only when exiting. Heading south, the entrance would be on the north end. Traffic going north would enter the south driveway. He stated that there is a need for

two driveways. As for parking the Medford study shows that there is a ratio of 0.37 parking spaces needed per bed. The plans for this site have allotted 126 parking spaces for 150 beds, which is sufficient. Mr. Simoff felt that having parking solely along the rear and not within the side yard would be inappropriate and would not serve the proposed use of the subject project. He also stated that traffic would be more intense if the building were used for office space as opposed to a nursing home.

Robert M. Hilsen was the nursing home administrator of Woodcrest Nursing home in New Milford which is owned by Mediplex. He stated that a municipal ambulance is called only in a case of severe emergency and that private ambulances are called most of the time. Woodcrest called on the New Milford ambulances 22 times. They have five private contracts with ambulance services which are used when residents are not extremely ill. He explained that they have 3 shifts during a 24 hour day. The morning shift which is from 7:00 a.m. to 3:00 p.m., is the largest shift. The evening shift is from 3:00 p.m. to 11:00 p.m. and has 45 employees. The last shift is from 11:00 p.m. to 7:00 a.m. and it has 20 employees. Woodcrest also has its own security which operates 24 hours a day, seven days a week. Mr. Hilsen also noticed that Woodcrest has only long term beds and that they have the highest ratings in the State. Woodcrest also provides service to the Community since they are involved with the Chamber of Commerce, community fund raising, health fairs, and other services to the community. He noted that 50% of their employees are from New milford. The facility has 236



beds and 80 parking spaces and there have never been complaints about parking.

Jeffrey Morris of Boswell Engineering, 330 Philips Avenue, Hackensack, is qualified as an expert in engineering and surveying. He testified to the proposed building location and the proposed parking and traffic circulation. Mr. Morris further stated that the developer will install a meter which will cost \$75,000 and a sanitary sewer which will result in a total expense of \$100,000. There is parking in the rear to the east and there is also a small parking lot at the north end. Mr. Morris explained that there will be landscaping across the north and south parking areas in order to shield the parking lot. He also added that they have proposed the road widening with the expense to be borne by the developer. Mr. Morris then stated that the standard footprint of the building was modified for the Oradell site. A site plan application has been filed and parking layout will be subject to site plan review.

Romelyn Frieman who formerly served as Administrator at Woodcrest and is now the President of Edron, the Applicant, stated that after much exploration it was determined that a long time care facility would be the best option for the development of this site. She also noted that the State reimburses the town 100% on welfare beds.

Joseph Murray testified concerning the administrative burdens and administrative costs that would be incurred in the processing of public assistance claims. He stated that the welfare director

used to work one day a week, but with 7-10 people on welfare she now works three days a week.

The Board also considered in connection with this application the testimonies of Mayor Kings, Truppi and D'Ercole, and the testimony of Mr. McGovern and Mr. May, which was given during hearings on the application of MAVCO Properties L.P. for a use variance to construct a nursing home. The application was Calendar #442.

Theresa M. King is the Mayor of New Milford. She testified that Woodcrest Nursing Home is a stable use which provides a source of employment for high school students and those seeking a part-time job. The nursing home property owner has participated in various civic functions.

Harvey E. Truppi is the Mayor of Emerson which Borough presently is the location of the Emerson Convalescent Home and the Armenian Home for the Elderly. Mayor Truppi stated that the Borough did experience an additional burden on administrative costs related to welfare applications. In addition there is a 60 to 90 day period before the Borough is reimbursed for welfare charges.

Gus D'Ercole is the Mayor of Norwood. Norwood is the site of a 240 bed nursing home and health care facility. Mayor D'ERcole also testified ;that the nursing home contributed to the purchase of an ambulance.

Thomas J. McGovern is a member of the New Milford Ambulance Corp. The ambulances are only used for emergencies and not

transportation. Mr. McGovern also testified as to need for an additional ambulance.

Charles May is the Chairman of the Planning Board of the Borough of Oradell. Mr. May testified that in the recent revision to the Master Plan there was no purposeful reason to exclude a nursing home.

WHEREAS, the Board considered the exhibits set forth on the attached "Schedule of Exhibits"; and

WHEREAS, as a result of the site inspection, testimony addressed at the public hearing, and exhibits submitted, the Board makes the following findings of fact:

1. The premises known as 600 Kinderkamack Road, Oradell, New Jersey is located in a B-2 business zone.

2. The Applicant has proposed the construction of a nursing home and health care facility which requires a use variance.

3. Based upon the demographics of Bergen County and the Borough of Oradell there is a sufficient number of people 65 years or older who are living alone to create a need for a nursing home facility.

4. A nursing home would create an additional drain on the emergency services of the Borough of Oradell.

5. The Applicant has stipulated that they will pay a fixed sum toward the cost of an ambulance.

6. The Applicant stipulated that there would be no drug or alcohol rehabilitation and no treatment of AIDS patients or mental patients in the proposed nursing home.

7. The nursing home will contain an adult day care operation, however, it will only conduct child day care facilities if required by the Department of Health regulations or the terms of the Certificate of Need.

8. Medical waste will be picked up by a properly licensed scavenger authorized to handle medical waste.

9. The location of the subject premises is such that the proposed nursing home will have little or no impact upon the surrounding properties.

10. The Board finds that by providing a service to the elderly and an alternative for senior citizen housing, the proposed nursing home would further serve to meet the goals of the Master Plan of the Borough of Oradell; and

WHEREAS, as a result of the site inspection and the public hearing, the Borough concludes that a nursing home on Block 807, Lot 4 is a benefit to the community in that it satisfies a need of our elderly citizens and as such demonstrates sufficient special reasons to permit the granting of a use variance.

Applicant has stipulated that any additional costs incurred by the Borough of Oradell pertaining to the use of the premises as a nursing home rather than as an office building, which would be permitted on site under the schedule of limitations of the Borough of Oradell, will be absolved or reimbursed by the applicant and, therefore, there will be no financial impact to the Borough. Furthermore, because of the location of the subject premises and the nature of a nursing home use, there will be no detriment to the

existing property owners. Consequently, the Board has determined that the granting of the application will not be detrimental to the Zone Plan or Zoning Ordinance of the Borough of Oradell.

NOW, THEREFORE, BE IT RESOLVED, that the application of Edron Development Corp., Inc., for a use variance to permit the operation of a nursing home and health care facility on the premises known as Block 807, Lot 4, be and the same is granted on the following conditions:

1. The approval is contingent upon payment of all taxes and assessments on the subject property.

2. The Applicant shall enter into a Developers Agreement, in a form satisfactory to the Board Attorney and the Governing Body which would incorporate Applicant's stipulation during the public hearings and would include the financial responsibilities to be undertaken by the Applicant. The Developers Agreement will be in recordable form so that it may be filed and recorded with the Bergen County Clerk's Office.

3. As stipulated to by the Applicant, the Developer's Agreement shall provide that the Applicant shall pay \$20,000 toward the purchase of a new ambulance as a contribution toward ameliorating the potential effect on emergency services of the Borough. Furthermore, the Developer's Agreement shall require the Applicant to absorb any increased cost resulting from the nursing home use. Such costs shall include, but will not be limited to, reimbursement to the Borough of Oradell for lost interest on monies forwarded to indigent or welfare recipients, and any administrative

costs related to the nursing home use. The Applicant or its assignee may minimize or eliminate these costs if it arranges for a deferral of any such payments so that the Borough does not lose interest on such advances, or if it prepares the necessary paperwork for processing of such payments for the Borough.

4. The Developer's Agreement shall provide that there will not be any drug or alcohol rehabilitation facilities on the premises. The premises shall also not be used as a care facility to treat persons having contagious diseases, AIDS, or who are mentally retarded. Any expansion of the nursing home beyond the skilled nursing home/long term residential care functions and adult day care service shall require an additional application for a use variance.

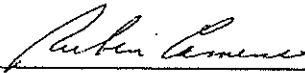
5. The Applicant shall obtain site plan approval. Any testimony presented at the hearings relating to design, layout, or parking was solely for informational purposes. This approval is not to be construed as approving any items which are subject to site plan approval.

6. The approval of the use variance to permit the nursing home is subject to submission by the Applicant of a Certificate of Need issued by the New Jersey Department of Health, which Certificate of Need shall permit the operation of a 150 bed nursing home on Block 807, Lot 4.

7. As stipulated by the Applicant, the Developer's Agreement shall provide that the Applicant shall pay for the meter installation, sewer construction and road improvements.

8. The Applicant shall secure approvals from all other governmental agencies having jurisdiction over this project.

9. The Applicant shall deposit sufficient escrow with the Borough Treasurer to cover all legal costs and recording fees incurred by the Borough in the preparation of the Developers' Agreement.

  
\_\_\_\_\_  
RUBIN CAMINS, Chairman

  
\_\_\_\_\_  
BARBARA SUE HERRMANN, Secretary

Motion By: Mr. Gnesin  
Seconded By: Ms. Eckel  
All in Favor: Messrs. Apolant, Eckel, Gnesin, Camins,  
Ms. Herrmann, Mrs. Shelley and Mr. Stubblebine  
Opposed: None  
Abstained: None

Resol. ADR

RESOLUTION

ORADELL ZONING BOARD OF ADJUSTMENT  
APPLICATION OF EDRON DEVELOPMENT CORP., INC.  
CALENDAR NO. 446

WHEREAS, Edron Development Corp., Inc. (hereinafter "Applicant") has applied to the Oradell Zoning Board of Adjustment for final site plan approval for the construction of a nursing home facility located at 600 Kinderkamack Road, Oradell, New Jersey, also known as Block 807, Lot 4, on the Tax Map of the Borough of Oradell; and

WHEREAS, the application for development is for the construction of a two-story brick building containing approximately 63,000 square feet to be used as a nursing home, for which use a Use Variance has been granted previously by this Board; and

WHEREAS, the Applicant requests a variance from Article 4, Section 290-15 of the Zoning Ordinance of the Borough of Oradell to permit certain off-street parking in areas on the premises other than the rear yard as required by the ordinance; and

WHEREAS, this matter came before the Board for hearing on June 23, 1992, at which time the Board took testimony from John Phillips, a Registered Architect retained by the Applicant regarding this application; and

WHEREAS, the Board further accepted into evidence certain exhibits offered by the Applicant, including:

1. Exhibit A-1 - Affidavit of Service;
2. Exhibit A-2 - Site Plan dated March 12, 1992;
3. Exhibit A-3 - Color rendering of site plan;
4. Exhibit A-4 - Floor Plan of First Floor;



5. Exhibit A-5 - Color rendering of proposed facility (south side view);
6. Exhibit A-6 - Floor Plan of Second Floor;
7. Exhibit A-7 - Revised Resolution granting use variance to the Applicant;
8. Exhibit A-2A - Revised site plan dated July 17, 1992;
9. Exhibit A-8 - Color rendering of A-2A;
10. Exhibit A-9 - Profile of the proposed building (two views);
11. Exhibit A-10 - Profile of the proposed building (north view);
12. Exhibit A-11 - Landscaping plan;
13. Exhibit A-12 - Correspondence from Department of Health of the State of New Jersey approving change in site regarding Certificate of Need AR-860640-16-02; and

WHEREAS, Mr. Philips testified that the proposed facility would have 150 beds and 126 parking spaces, with egress on the north and south sides of the property; and

WHEREAS, Mr. Philips further testified that the exterior of the proposed structure was designed with a mansard roof and with "wings" rather than a solid rectangular structure in order that it would appear residential in character from Kinderkamack Road; and

WHEREAS, Mr. Philips further testified that the design of the building, as proposed, is uniquely suited for the efficient operation of a nursing home facility; and

WHEREAS, Mr. Philips further testified that landscaping and land contours were designed to maximize screening of the building and parking areas from Kinderkamack Road; and

WHEREAS, Mr. Philips further testified that the building will conform with all building codes and safety regulations and will contain an emergency generator; and

WHEREAS, Mr. Philips further testified that the layout of the building and the configuration of the property required that parking be permitted on the side and the front of the building, as well as in the rear yard; and

WHEREAS, Mr. Philips further testified that the landscaping and berms to be installed by the developer would adequately screen the building and the parking areas from the view of the public travelling on Kinderkamack Road; and

WHEREAS, Mr. Philips further testified that although the building could be designed higher and of different configurations in order to allow parking in the rear yard, such a design would not be as harmonious with the surrounding properties because such a design would reduce the residential appearance of the project; and

WHEREAS, the Board, further heard testimony from Jeffrey L. Morris, P.E., an engineer retained by the Applicant, who testified regarding drainage and sanitary sewer connections, and further testified that the Applicant would comply in all respects with the concerns addressed in the Borough Engineer's letter dated June 30, 1992, provided that items "2", "3" and "5" regarding access to Kinderkamack Road and the common driveway with property owner immediately to the south would be dealt with by the Bergen County Planning Board which has jurisdiction over those matters; and

WHEREAS, Mr. Morris further testified that the requested parking variance in this matter would not impair the zone plan of the Borough of Oradell in that the parking will be well shielded

and the benefits to such a variance would outweigh any detriments caused thereby; and

WHEREAS, Mr. Morris further testified that there will be no substantial detriment to the public good by granting the variance in question in that the proposed parking plan would provide for efficient and safe traffic circulation and that adequate shielding would be provided from Kinderkamack Road; and

WHEREAS, as a result of the Board's concerns regarding parking, Applicant submitted a revised site plan, "A-2A", which reconfigured the parking in order to provide a total of 125 spaces and maximize the use of the rear of the premises, which reconfigured design reduced the quantum of the parking variance requested, but required a design waiver for 9 foot by 18 foot parking spaces; and

WHEREAS, the Applicant has represented that it will comply with the requirements set forth by the Oradell Fire Department in its report dated July 24, 1992; and

WHEREAS, at the request of the Board, the Applicant has agreed to designate 15 parking spaces now located on the northwest side of the premises as "future parking", which will be the subject of a developers agreement that will require those spaces to be constructed if so decided by the Oradell Zoning Board, after a hearing, which may be initiated by either the Applicant or the Borough of Oradell; and

WHEREAS, the Applicant has represented to the Board that it is in discussions with the abutting property owner to the south regarding the construction of a common driveway as is required by

a prior Bergen County Planning Board Resolution regarding the subject property; and

WHEREAS, although the Applicant has not reached an agreement with the neighboring property owner with regard to that issue, the Applicant has requested that this Board vote upon its application, in its present form, with full knowledge that in the event the site plan is modified after the agreement with the neighboring property owner and approval by the Bergen County Planning Board, the Applicant will be required to return to this Board for further approval should there be substantial changes to the plan; and

WHEREAS, the Board has heard objection from the neighboring property owner to the south with regard to this issue; and

WHEREAS, the Board has further heard the testimony of John Peal, an expert retained by said property owner, to the effect that there presently exists on site certain wetlands subject to the jurisdiction of the New Jersey Department of Environmental Protection and Energy; and

WHEREAS, the Applicant has acknowledged that it will obtain all necessary approvals with regard to same; and

WHEREAS, the members of the Zoning Board have visited the site and, after due consideration of testimony presented to it, finds the following facts:

1. The application in question is complete despite the objections of the neighboring property owner regarding the proposed common driveway; and

2. The Board finds that the configuration of the building and its location on the site is appropriate given the uniqueness of the site and the proposed use; and

3. The proposed parking on the site, subject to the conditions as set forth below, is adequate for the use; and

4. The shielding by trees and land contours proposed by the Applicant will be adequate and minimize the impact upon neighboring properties; and

5. The overall design of the building as a two-story structure with a mansard roof, tan brick, and a wing design will present a residential look which is in conformity with the properties across Kinderkamack Road from the subject premises; and

6. The parking spaces proposed by the Applicant are placed as far to the rear of the premises as is reasonably practicable and the unique configuration of the building and land and the proposed landscaping by the Applicant will not adversely affect neighboring properties; and

7. The proposed common driveway set forth in the application, if acceptable to the neighboring property owner and the County of Bergen, is a safe means of routing traffic on and off the premises as well as the neighboring premises; and

8. The 15 parking spaces designated as "future parking" do not at this time appear to be necessary for the proposed development, although the Board acknowledges that future experience may change this conclusion; thus, it is in the best interest of the public for the Board to reserve the right to require these spaces to be constructed in the future; and

WHEREAS, the benefits from the advancement of the purposes of the Zoning Ordinance outweigh the minimal detriment from the requested parking variance; and

WHEREAS, as a result of the aforesaid findings, the Board concludes that the requested parking variance and design waivers for parking spaces can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan of the Zoning Board of the Borough of Oradell; and

WHEREAS, with the exception of the variance and design waivers set forth above, the application in question conforms in all respects to the zoning regulations of the Borough of Oradell; and

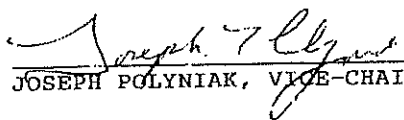
WHEREAS, the location of the parking spaces to the rear of the premises is in accordance with the spirit and intent of the Zoning Ordinance of the Borough of Oradell, if not with the explicit language thereof.

NOW, THEREFORE, BE IT RESOLVED, that the application of Edron Development Corp., Inc. for final site plan approval for construction of a nursing home on premises designated as Block 807, Lot 4, in the Tax Map of the Borough of Oradell, also known as 600 Kinderkamack Road, Oradell, New Jersey, be, and hereby is, approved subject to the following conditions:

1. Applicant will enter into a developers agreement which shall include, inter alia, a provision designating 15 parking spaces on the northwest portion of the premises as future parking which shall be developed only after hearing and further determination by this Board, at the request of either the Borough of Oradell or the Applicant, based on future experience with the facility in question; and

2. Approval of the site plan in question shall be subject to approval of the following governmental agencies:

- A. Bergen County Planning Board;
- B. Bergen County Soil Conservation District;
- C. Bergen County Department of Environmental Protection and Energy with regard to the sanitary sewer extension permit;
- D. Bergen County Utilities Authority for connection to existing sanitary sewer trunk line;
- E. New Jersey Department of Environmental Protection and Energy, if and to the extent required, with regard to any wetlands on the site which are within the jurisdiction of same;
- F. Satisfaction of all conditions of the Use Variance previously grant by the Oradell Zoning Board for the subject premises, which conditions are incorporated herein and made a part hereof as if fully set forth at length.

  
 JOSEPH POLYNIAK, VICE-CHAIRMAN

  
 BARBARA SUE HERRMANN, Secretary

Motion by: Mr. Gnesin

Seconded by: Mrs. Shelley

All in Favor: Mr. Polyniak, Ms. Herrmann, Mr. Gnesin,  
 Mrs. Shelley and Mr. Apolant.

Opposed: NONE.

Abstained: NONE.

DATED: August 25, 1992

# EXHIBIT “D”



**RESOLUTION****ORADELL ZONING BOARD OF ADJUSTMENT  
APPLICATION OF MAVCO PROPERTIES, L.P.  
CALENDAR NO. 442**

WHEREAS, Mavco Properties L.P. (hereinafter "Applicant"), has applied for a use variance to permit the conversion of an existing office building into a 210 unit nursing home on premises known as 680 Kinderkamack Road (Block 807, Lot 2) Oradell, New Jersey; and

WHEREAS, after due notice and publication, the matter was called for a hearing on January 28, 1992 which hearing was continued on February 25, 1992, at which time the Board heard testimony from the following witnesses all of whom were duly sworn:

James F. Murphy who was qualified to testify as an engineer, stated that he designed the plans which were marked as Exhibits A-1 through A-5. Mr. Murphy further testified that presently there is an application before the New Jersey State Department of Health to transfer an existing Certificate Of Need from Hackensack to the subject site. Mr. Murphy's design would convert the existing building, presently used as an office, into a 210 bed nursing home. The nursing home would provide 180 beds for "long term care" patients and 30 beds for "residential" patients. All residential patients must be ambulatory. The three floors of the building would accept all of the beds and provide some ancillary services. The design for the first floor contains 60 long term care beds together with a kitchen, laundry and certain other engineering facilities. The second floor would consist of 60 long term care

beds and 14 residential beds. The third floor would contain another 60 long term care beds and 16 residential beds. The number of beds is fixed by the New Jersey State Department of Health and bears a relationship to the square footage required. Mr. Murphy further testified that as part of a future site plan application, the Applicant will be requesting approval of a 3,000 square foot addition. Mr. Murphy stated that there would be a nursing station for each 60 bed unit and facilities for an employee day care center, which he testified was mandated under the Certificate of Need. Further, the nursing home would not provide any drug treatment services, or facilities for treatment of AIDS patients or mental patients. The structure will not have any piped-in oxygen. There will be no doctor offices on the premises or adult day care. The Applicant will provide for properly licensed medical waste disposal and a scavenger for other waste pick-up. Finally, Mr. Murphy testified that since the structure will not contain a pharmacy, the Applicant will make arrangements with an outside pharmacy to provide service on a 24 hour basis.

Hal Simoff was qualified to testify as a traffic engineer. Mr. Simoff stated that he prepared a traffic and parking analysis report which is dated January 24, 1992 and was marked as Exhibit A-9. The report reflects existing traffic conditions and Mr. Simoff's opinion as to the impact a nursing home use would have upon those conditions. Mr. Simoff testified that traffic counts were conducted on January 21, 22 and 24, 1992. In addition, he reviewed the traffic generated at the Allendale Nursing Home to determine what traffic conditions can be expected from a nursing

home use. Mr. Simoff stated that peak hours at the site for traffic volume were between 7 and 8 a.m. At that time it would be expected that there would be 25 vehicles entering the site and 12 vehicles exiting the site. The afternoon peak hours were between 4 and 5 p.m. at which time it was expected 17 vehicles would be entering the site and 30 vehicles would be exiting the site. Based upon his studies, Mr. Simoff concluded that the traffic flow generated by a nursing home use during peak hours would be approximately 1/4 to 1/5 of the total of the traffic flow generated by an office building use. On a 24 hours basis the traffic flow for a nursing home would be approximately 40% of that of an office building. Mr. Simoff further testified that the highest utilization of the site for parking would require 90 to 95 parking spaces. The Applicant intends to provide 110 parking spaces. In Mr. Simoff's opinion the proposed parking is reasonably sufficient to service the nursing home use.

Kenneth Ochab is a licensed professional planner who was qualified as an expert to testify on planning matters. Mr. Ochab prepared a report which was marked as Exhibit A-8. In his report and testimony Mr. Ochab pointed out that there exists special reasons why a nursing home is a beneficial use. In his opinion it promotes the public welfare in a manner similar to that of a school, hospital or utility building. Using Exhibit A-13, a map showing the site, Mr. Ochab testified that the subject premises is located in a B-2, limited business zone. It is presently being used in conformance with the Ordinance as an office building. To the rear or eastern side of the tract is the Oradell Reservoir and

a golf course. North and south of the building are other office buildings. To the west of the property is Kinderkamack Road followed by residences which are set back from the road. Mr. Ochab testified that in addition to generating less traffic than an office building use, a nursing home will create less noise. Consequently in Mr. Ochab's opinion there would be no detriment to the surrounding property by converting the office use to a nursing home use. Mr. Ochab researched the demographics of Oradell and Bergen County. He testified that at present there are 205 people 65 years or older living alone in Oradell. In Bergen County there are 30,900 people who are 65 years or older and living alone. In his opinion, this statistic justifies the need for a nursing home facility. Mr. Ochab testified that the conversion of the site would further the goals of the Master Plan. It would provide a transitional balance between the existing uses and an alternate form of senior citizen housing.

Theresa M. King is the Mayor of New Milford, a neighboring borough which presently serves as the situs of the Woodcrest Nursing Home. Mayor King testified that Woodcrest Nursing Home is a stable use which provides a source of employment for high school students and those seeking a part-time job. The nursing home property owner has participated in various civic functions. Its presence did not present any undue strain on either emergency or general municipal services.

Harvey E. Truppi is the Mayor of Emerson which borough presently is the location of the Emerson Convalescent Home and the Armenian Home for the Elderly. Mayor Truppi stated that initially

the borough experienced some difficulty with false alarms and emergency transportation. To alleviate the problem, the private nursing home provided alternate transportation and private testing for the alarm system. Mayor Truppi stated that the borough did experience an additional burden on administrative costs related to welfare applications. In addition there is a 60 to 90 day period before the borough is reimbursed for welfare charges. This represents a time during which interest is lost on money that would have been invested by the borough. Mayor Truppi further testified that in his opinion there is a need for another nursing home facility in the Pascack Valley.

Gus D'Ercole is the Mayor of Norwood. Norwood is the site of a 240 bed nursing home and health care facility. The structure is presently going to add 120 more beds. He further stated that there is about a year wait to enter the nursing home. Approximately 20 of the patients are from Norwood the rest are from out of town. Mayor D'Ercole also testified that the nursing home contributed to the purchase of an ambulance.

Thomas J. McGovern is a member of the New Milford Ambulance Corp. Mr. McGovern testified as to his concern that a nursing home facility should have sufficient room to adequately handle emergency vehicles and apparatus. He also testified that the ambulance corp has two ambulances which are used to respond to approximately 1300 calls a year from New Milford and Oradell. Of these calls 50 to 100 are for the nursing home. The ambulances are only used for emergencies and not transportation. The New Milford Nursing Home has 236 beds. Mr. McGovern also testified as to need for an

additional ambulance.

Carolyn Hague the Mayor of the Borough of Oradell stated that taxes were delinquent on the property.

Charles May is the Chairman of the Planning Board of the Borough of Oradell. Mr. May testified that in the recent revision to the Master Plan there was no purposeful reason to exclude a nursing home. Mr. May further stated that a nursing home use was not considered in the updating of the Master Plan.

John M. Mavroudis a principal of the Applicant testified as to the Certificate Of Need required to operate a nursing home. The New Jersey State Department of Health has issued a Certificate Of Need for a site in Hackensack. Mr. Mavroudis has applied to transfer this Certificate to the property owned by the Applicant. The transfer is subject to obtaining approval of the use variance. Mr. Mavroudis stated that he was concerned that the Borough might incur additional costs if a nursing home was operated on the subject premises. Mr. Mavroudis stipulated that the Applicant and property owner would be responsible for any additional costs incurred by the municipality as a result of the operation of the nursing home. That would include, but not be limited to, any indigent or welfare recipients that would have to be paid for by the Borough and any lost interest or administrative costs incurred by the Borough. Mr. Mavroudis further stipulated that the property owner and Applicant would donate, without qualification, one-half of the cost of an ambulance and assist the ambulance corp in private fund raising so that an additional ambulance could be purchased for the Oradell New Milford Ambulance Corps with no cost

to the Borough. Mr. Mavroudis agreed to these stipulations being a condition of the granting of the variance and agreed to have the stipulations also contained in a Developers Agreement which would bind the successors and assigns of the Applicant and property owner; and

WHEREAS, the Board conducted a site inspection of the property on February 22, 1992; and

WHEREAS, the Board at its public hearing on February 25, 1992 viewed a videotape of the Wayne Nursing Home. This facility is located in Wayne and is of a similar design to that proposed by the Applicant; and

WHEREAS, the Board considered the following exhibits which were moved into evidence:

- A-1 First floor plan.
- A-2 Second floor plan.
- A-3 Third floor plan.
- A-4 Elevations of the building.
- A-5 Cross sections.
- A-6 Application.
- A-7 Affidavit of Service.
- A-8 Planning Report prepared by Kenneth Ochab Associates dated January 20, 1992.
- A-9 Traffic and Parking Analysis prepared Simoff & Staigar Associates, Inc. dated January 24, 1992.
- A-14 Letter from Mr. Shapiro of United Way of Bergen County.
- A-15-A-19 Group of photographs.
- A-20 Videotape of Wayne Nursing Home; and

WHEREAS, as a result of the site inspection, testimony adduced at the public hearing, and exhibits submitted, the Board makes the following findings of fact:

1. The premises known as 680 Kinderkamack Road, Oradell, New Jersey, are located in a B-2 business zone;
2. The use of the premises as an office building are in conformance with the existing zoning ordinance;
3. The Applicant has proposed to convert the premises to use as a nursing home which requires the granting of a use variance;
4. Based upon the demographics of Bergen County and the Borough of Oradell there is a sufficient number of people 65 years or older who are living alone to create a need for a nursing home facility;
5. The surrounding properties would not be impacted any further by a conversion of the office use into a nursing home;
6. A nursing home would create an additional drain on the emergency services of the Borough of Oradell;
7. The Applicant and property owner have stipulated that they would donate, without qualification, one-half the cost of an ambulance and institute fund raising activities in order to insure that there was sufficient financial resources to cover any increased burden upon the emergency services of the Borough of Oradell, which would include, but not be limited to, the purchase of an additional ambulance without cost to the Borough;
8. The Applicant stipulated that there would be no drug rehabilitation services, no treatment of AIDS patients or mental patients in the proposed nursing home;
9. The Applicant stipulated that there would be no oxygen piped into the nursing home;
10. The nursing home would not contain any doctor offices or adult day care operations and will only conduct child day care facilities for employees of the nursing home only if required by Department of Health regulations or the terms of the Certificate Of Need;
11. Medical waste will be picked-up by a properly licensed scavenger authorized to handle medical waste;



12. The location of the subject premises is such that the proposed nursing home will have little or no impact upon the surrounding properties;
13. The Board finds that by providing a service to the elderly and an alternative for senior citizen housing, the proposed nursing home would further serve to meet the goals of the Master Plan of the Borough of Oradell; and

WHEREAS, as a result of the site inspection and the public hearing, the Board concludes that the conversion of the existing office use into a nursing home on Block 807, Lot 2 is a benefit to the community in that it satisfies a need of our elderly citizens and as such demonstrates sufficient special reasons to permit the granting of a use variance.

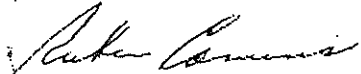
Since the Applicant and property owner has stipulated that any additional costs incurred by the Borough of Oradell will be absorbed by the Applicant and property owner, there will be no financial impact to the borough. Furthermore, because of the location of the subject premises and the nature of a nursing home use, there will be no detriment to the existing property owners beyond that already existing as a result of the office building use. Consequently, the Board has determined that the granting of the application will not be detrimental to the Zone Plan or Zoning Ordinance of the Borough of Oradell.

NOW, THEREFORE, BE IT RESOLVED, that the application of Mavco Properties, L.P., for a use variance to convert premises known as Block 807, Lot 2 from an office building use to a nursing home use, be and the same is GRANTED on the following conditions.

1. This approval is contingent upon payment in full of all delinquent taxes and assessments on the subject property.

2. The Applicant shall enter into a Developers Agreement, in a form satisfactory to the Board Attorney and the Governing Body which would incorporate Applicant's stipulation during the public hearings and would include the financial responsibilities to be undertaken by the Applicant. The Developers Agreement will be in recordable form so that it may be filed and recorded with the Bergen County Clerk's Office.
3. As stipulated to by the Applicant, the Developers Agreement shall provide that the Applicant shall pay one-half the cost of an ambulance and take part in private fund raising for the activities. Furthermore, the Developers Agreement shall require the Applicant to absorb any increased cost resulting from the nursing home use. Such costs shall included, but will not be limited to, reimbursement to the Borough of Oradell for lost interest on monies forwarded to indigent or welfare recipients, and any administrative costs related to the nursing home use.
4. The Developers Agreement shall provide that there will not be any drug rehabilitation facilities on the premises. The Developers Agreement shall further provide that there will be no piping of oxygen, no doctors offices, or adult day care facilities. Furthermore, the premises shall not be used as a care facility to treat persons having contagious diseases or persons mentally retarded. Any expansion of the services of the nursing home beyond the long term and residential care functions testified to by Mr. Murphy shall require an additional application for a use variance.
5. The Applicant shall obtain site plan approval. Any testimony presented at the hearings relating to design, layout, or parking was solely for informational purposes. This approval is not to be construed as approving any items which are subject to site plan approval.
6. The approval of the use variance to permit the nursing home is subject to submission by the Applicant of a Certificate Of Need issued by the New Jersey Department of Health, which Certificate Of Need shall permit the operation of a 210 bed nursing home on Block 807, Lot 2.
7. The Applicant shall secure approvals from all other governmental agencies having jurisdiction over this project.

- 8. The Applicant shall deposit sufficient escrow with the Borough Treasurer to cover all legal costs and recording fees incurred by the borough in the preparation of the Developers Agreement.

  
 RUBIN CAMINS, Chairman

  
 BARBARA SUE HERMANN, Secretary

Motion by: Mr. Polyniak

Seconded by: Mrs. Shelley

All in Favor: Messrs. Apolant, Eckel, Gnesin, Polyniak, Camins, Ms. Herrmann, Mrs. Shelley and Mr. Atwater

Opposed: None

Abstained: None

# EXHIBIT “E”

Denial of Use Variance, Preliminary and Final Site Plan and Subdivision Approval (including denial of d(6) height variance, A d(4) FAR variance, building coverage variance, lot coverage variance, front yard setback variance, rear yard setback variances, parking configuration variances); Denial of Modification to Prior Use Variance

## RESOLUTION

### ORADELL BOARD OF ADJUSTMENT

#### APPLICATION OF BLAUVELT ASSOCIATES, LLC CAL #733-07

WHEREAS, Blauvelt Associates, LLC (hereinafter referred to as the "Applicant"), made an application for the development of an assisted living facility specifically for persons with dementia, Alzheimer's disease, and other such forms of mental impairments, in violation of the following:

- (i) Oradell Zoning Ordinance Section 240-7.5A(1) relating to permitted uses in the zone;
- (ii) Oradell Zoning Ordinance Section 240-7.5A(4)(e) relating to permitted floor area ratio (33% permitted where 50.5% proposed, exclusive of the basement level);
- (iii) Oradell Zoning Ordinance Section 240-7.10B relating to maximum permitted building height for the proposed building (32 feet maximum permitted where 40.3 feet proposed) and height variance for the Blauvelt Mansion, which is a pre-existing non-conforming structure, but which property is being modified by the application);
- (iv) Oradell Zoning Ordinance Section 240-7.5A(4)(c) relating to maximum building coverage (25% permitted where 28.1% proposed);
- (v) Oradell Zoning Ordinance Section 240-7.5A(4)(d) relating to maximum lot coverage (40% permitted where 54% proposed);
- (vi) Oradell Zoning Ordinance Section 240-7.5A(4)(b)(1) relating to minimum front yard setback (35 feet required where 30 feet proposed);

6. July 16, 2007 (Special Meeting)
7. July 23, 2007
8. August 20, 2007 (Special Meeting)
9. September 17, 2007 (Special Meeting)
10. September 24, 2007
11. October 22, 2007
12. October 30, 2007 (Special Meeting)
13. November 19, 2007 (Special Meeting)
14. November 26, 2007
15. December 19, 2007 (Special Meeting)

The Board held ten (10) special meetings on the application in a period of nine (9) months.

WHEREAS, at such times, the Applicant was represented by Joseph L. Basralian, Esq. of the law firm of Winne Banta Hetherington Basralian & Kahn, PC, 21 Main Street, Hackensack, New Jersey; and

WHEREAS, some of the interested parties consisted of an association of nearby residents called Stop Residential Rezoning, Inc. (hereinafter "S.R.R.") which was initially represented by Gail L. Price, Esq. of the law firm of Price Meese Shulman & D'Arminio, PC, 50 Tice Boulevard, Woodcliff Lake, New Jersey, who subsequently withdrew; and

WHEREAS, the owner of adjacent Block 808, Lot 1, over which access to the Premises is situated, the Blauvelt Demarest Foundation, Inc., was represented by T. Thomas Van Dam, Esq., Suite 207, 3 University Plaza, Hackensack, New Jersey; and

WHEREAS, the following witnesses testified on behalf of the Applicant during the course of the hearings:

Adjustment (hereinafter "the Board") during the course of the hearings:

1. Joseph Burgis, P.P., of Burgis Associates, Inc., the Board's Planner;
2. Robyn Welch, P.P., also of Burgis Associates, Inc.;
3. Berge Tombalakian, P.E., of Boswell McClave Engineering, Inc., the Board's engineer;
4. Mr. Femia, P.E., of Boswell McClave Engineering, Inc.
5. Stephen Depken, Borough of Oradell Zoning Officer;

WHEREAS, the Board made a physical inspection of the Premises during the course of the proceedings; and

WHEREAS, the Oradell Board of Adjustment, after considering the testimony of the Applicant and witnesses and reviewing the exhibits and proofs, hereby summarizes the information provided, addresses various legal issues, and makes findings of fact and conclusions of law:

#### I. CONFLICT OF INTEREST

A. Several members of the Oradell Board of Adjustment may be burdened by impermissible conflicts of interests or an appearance of impropriety. Strict adherence to the Local Government Ethics Law compels those members to step down from the Board and/or disqualify themselves from considering the application. In particular, conflicts of interest and/or the appearance of impropriety was addressed in the case of the following board members:

1. Chairman Joseph Polyniak. A member of Chairman Polyniak's immediate family (his emancipated son) has or has had a casual business relationship with Jeffery Wells, the applicant's architect and the owner of the premises. Because of the personal involvement of a member of Mr. Polyniak's

in a partnership meeting on the day after the relationship was discussed by the Board, the relationship was considered to be not so remote and speculative as to permit his continued participation in the proceedings. As a result, Mr. Michelman voluntarily disqualified himself from the proceedings.

5. Board Alternate Member Rita Walker. Board Alternate Member Walker is the Finance Chairperson for the ticket and is personally involved with the candidacy of one of the objectors. Because of her activity with a person who is a member of the objector's group, she has voluntarily disqualified herself.

B. The Oradell Board of Adjustment is comprised of seven (7) regular members and two (2) alternate members. Due to potential conflicts of interests and/or the appearances of impropriety, four regular members and one alternate member disqualified themselves and stepped down from the board during the pendency of the application. Their decisions to do so leaves the Board with three regular members and one alternate member, for a total of four members to consider the application.

C. The Board is aware that N.J.S.A. 40:55D-69.1 permits the addition of members of the Planning Board when sufficient members of the Board of Adjustment are prohibited by N.J.S.A. 40:55D-69 from acting on a matter due to the member's personal or financial interest therein when that disqualification results in the lack of a quorum. However, since three regular members and one alternate member of the Board of Adjustment remain eligible to act on the matter, a quorum exists and there was a question of whether the provisions of N.J.S.A. 40:55D-69.1 were applicable to this situation.



family residential dwellings whose frontage is on East Drive, and to the north by the property of the Blauvelt-Demarest Foundation, Inc. (Block 805, Lot 1).

Presently, the Premises are improved with the historic Blauvelt Mansion, which has existed since the late nineteenth century and is considered an important feature of the neighborhood by the community. There is another structure on the westerly half of the parcel. The easterly half of the Premises is unimproved and is occupied mostly by a large field directly in front of the Blauvelt Mansion. While the Premises maintains over 500 feet of frontage along Kinderkamack Road, it gains access to that roadway via a personal access easement vested in the owner of the Blauvelt Mansion over Block 805, Lot 1 owned by the Blauvelt-Demarest Foundation, LLC.

The Premises currently contains two residential dwellings, with the historic Blauvelt Mansion serving as the home of Jeffrey and Bonnie Wells as well as offices for Wells Associates, an architectural firm. The property owner previously received use variance approval from the Board by resolution dated March 28, 1995 to construct a second house. They had also previously obtained a use variance from the Board to use the Blauvelt Mansion for office use in part of the home of Mr. and Mrs. Wells.

H. The main topographic feature of the Premises is a steep hill that climbs west from Kinderkamack Road to the rear property line. The frontage along Kinderkamack Road has an approximate elevation of forty (40') feet above sea level while the rear property line has an elevation of approximately one hundred eight (108') feet above sea level, such that the rear of the Premises is approximately seventy (70') feet higher than along the frontage.

I. The Applicant proposes to develop an adult congregate care assisted living facility for persons with dementia and Alzheimer's disease on the front portion of the Premises,

A-9	Site Plan
A-9-1	Revised Site Plan
A-10	Minor Subdivision Plan, 3/27/07
A-11	Interrelationship of Assisted Living Facility and Blauvelt Mansion Plan
A-12	Traffic Impact Report, dated September 7, 2007
A-13	CV, Peter Steck, P.P.
A-14	Planning Handout, 4 pages
A-15	Stakeout Plan
A-16	Facilities Rendering
A-17	Nearby Road Profiles, dated September 24, 2007
A-18	List of Comparable Facilities
A-19	Section B-B, grading cross-section profile

O-1	Page 10, table 10 of Oradell Master Plan
O-2	Study from <u>The Gerontologist</u> , entitled "Health and Functional Outcomes and Healthcare Utilization of Persons with Dementia in Residential Care and Assisted Living Facilities Comparison with Nursing Home"
O-3	Abstract of O-2
B-1	Burgis Associates handout

L. Several procedural issues were raised during the course of the hearings that were required to be dealt with incident to the hearing of this application as discussed herein.

M. As stated, substantive hearings were conducted April 16, 2007, May 10, 2007, June 18, 2007, June 25, 2007, July 12, 2007, July 16, 2007, August 20, 2007, September 17, 2007, October 30, 2007, November 19, 2007, and December 19, 2007. A brief synopsis of the testimony is as follows:

1. On April 16, 2007, the Board determined that that the Applicant's public notice was insufficient because it failed to provide notice as required by the Municipal Land Use Law, N.J.S.A. 40:55D-12, to owners of property within 200 feet of Block 805, Lot 1. Notice to

Mr. Hodges testified that the proposed 76-bed facility would be necessary to make the development "cost effective" for the developer. He explained that assisted living facilities generates charges and monthly fees approximately 40% lower than do nursing homes because of staffing requirements. The assisted living facilities need fewer staffers because the residents are typically more self-sufficient, and in the case of dementia facilities, Mr. Hodges indicated that socialization benefits of communal living would greatly improve the quality of life for the residents. He also testified that Care One intended to staff the facility with one caregiver per eight residents and that the maximum number of employees at the facility (which included administration, dietary, housekeeping, and activities staff) would be approximately 25 employees.

3. . . . At the July 12, 2007 proceedings, Dr. Calkins testified on behalf of the Applicant. She explained that early stage Alzheimer's and dementia patients are able to care for themselves and plan out complex functions. She testified that most do not have the need for 24-hour medical care as would be found in a nursing home. She advised the Board that the residents at this facility would have their own rooms but would share common areas. The facility was to be divided into four "households" of 19 residents each.

Dr. Hendrickson also testified at the July 12, 2007 hearing. He testified that he had been retained by Care One to determine whether there was a need for a dementia care program in the area. He advised that he examined U.S. census data and projected the number of dementia and Alzheimer's patients that would reside in Bergen County in 2010, 2020, and 2030.

4. Hendrickson's testimony continued at the July 16, 2007 special meeting. He testified that in the year 2010, the number of residents in Bergen County with dementia or other related illnesses would be approximately 21,000, but as the population ages, there would be

the physical features of the lot, and testified that the proposed building would cover approximately 24,848 square feet. The assisted living facility would appear to be two stories high when viewed from Kinderkamack Road. The building was to be located 20 feet north of the southerly property line, set back 35 feet from Kinderkamack Road. The rear yard setback to the new lot line created via the minor subdivision would be 24 feet. The remaining side yard, on the north side of the proposed facility, would be 173 feet. Parking would be provided in the large open area north of the building, and 44 parking spaces were provided, which would be in excess of the 38 parking spaces required by the Residential Site Improvement Standards (RSIS), though the number of spaces adjacent to each other without a landscaped dividing island would require a variance.

Mr. Lapatka also explained how the topography of the property would drive the necessary site improvements. Proposed Lot 2.01, which would be created out of the lawn area of the Blauvelt Mansion property, had an average slope of 15% from Kinderkamack Road towards the west side of the property. The site plan called for the grading the building area into a plateau, and creating the flat areas would require the installation of retaining walls in the front yard. The access driveway would have a maximum slope of 11.8%, which would be within the RSIS guidelines. He also testified that the parking lot and driveway were designed to accommodate a tractor trailer. The facility required the Applicant to cut approximately 12,593 cubic yards of soil to create the plateau. Of that amount, 10,479 cubic yards of soil would be exported from the site.

Mr. Lapatka testified that the maximum height of the building under the Oradell Zoning Code was 32 feet, though the facility was proposed to be 40 feet high. The maximum permitted lot coverage was 25% in the R-1 zone and 40% in a business district, but the Applicant

assisted living features are necessary because of the handicaps facing the residents.

Mr. Steck testified to the surrounding land uses. He testified that to the north of the facility is a museum. To the west are single-family homes that are at a significantly higher elevation than the Blauvelt Mansion and which are substantially buffered by landscaping that limits visual access to the Premises.

Mr. Steck also stated his belief that the facility was inherently beneficial because the very existence of the facility would advance the general welfare. He explained that the facility was licensed by the State, has a specialized design for a particular type of resident, and requires a Certificate of Need. He analogized the facility to a nursing home, which he noted was an inherently beneficial use also. He noted that other witnesses, whom the board qualified as experts in their field, had testified that the number of senior citizens and elderly residents would increase dramatically in the next 25 years, and that tens of thousands of Bergen County residents would suffer from some sort of dementia. He indicated that with only 336 dementia beds in nursing homes and assisted living facilities in Bergen County, there was a significant need in the area for this facility.

Mr. Steck explained what he believed to be the negative impacts from the development of a non-permitted use. He testified that the development of the facility would cause stormwater runoff, increased lighting, constitutes a different use than single family residential, and would cause a slight increase in traffic. Mr. Steck explained that any negative impacts from the facility were limited by the buffering provided by the Blauvelt Mansion to the west of the proposed facility, the topography and the landscaping that would separate the homes on East Drive from the facility. He further testified that the Applicant could develop the facility with a flat roof and not require a variance, but informed the Board that a choice was made to try

then continue. He agreed, however, that the extent of the soil movement necessary was solely related to the scope of the facility proposed by the Applicant. Mr. Lapatka also recognized that if the facility were designed differently, less soil could be removed from the site.

The Applicant's architect, Mr. Wells, who is also the property owner, also testified at the October 30, 2007 Special Meeting. Mr. Wells testified that the three-story office building located on the east side of Kinderkamack Road is higher than the roof of the proposed facility. He indicated that he lived in the house on the Premises for 15 years and that his current view is of non-residential buildings. He then expressed a desire to have a view of a more residentially oriented building from his home, and indicated that this facility is designed to fit that look.

In response to questioning, Mr. Wells indicated that the facility would be 40 feet high, while single family houses, if built on the site, would be permitted to reach 32 feet high (unless variances were sought). He also testified that if the Premises were developed with permitted uses, no grading would be required. However, he advised the Board that if single-family residential uses were developed along the Premises frontage, the houses would be located further up the slope on the Premises and that more of the Blauvelt Mansion would be obscured from view.

8. At the November 19, 2007 Special Meeting, the Applicant's planner, Mr. Steck testified as to the amended site design. He emphasized that the facility is residential in nature although the traffic generated by the facility comes from the employees. Mr. Steck testified that nursing homes typically come in groups of 60 beds per nursing station due to funding allocation and staffing needs. He testified further that the number of beds and the design of the facility are important to provide quality and cost-effective care. He testified that he was

roadway widening, and that the buffer area would be diminished. He further testified that the impacts from this facility would be less than what would result if permitted uses were developed. Specifically, Mr. Steck pointed out that the view of the Blauvelt Mansion would be more obscured if single-family dwellings were developed, and a church (or other house of worship) would generate far more traffic than the proposed facility.

Mr. Steck testified that the scope of the facility was necessary to provide the benefits to the public that was required for inherently beneficial uses. The reasons for this conclusion were that the facility required a Certificate of Need from the State and because of the increasing number of persons that suffer from dementia, Alzheimer's disease, and other related impairments. He also explained that in terms of the topography of the surrounding neighborhood, because the facility is not proposed to be integrated into the residential streets, and because the facility is located across the street from large buildings, the Applicant's project satisfies the negative criteria for a use variance. Mr. Steck testified that the proposal would not impair the Master Plan's Historic Element Plan because the Applicant did not propose to remove the Blauvelt Mansion. Instead, Mr. Steck argued that by extracting some value from the Premises, it was more likely that the Blauvelt Mansion would remain intact. He also testified that the facility would alter, but would not threaten the integrity of the neighborhood.

9. At the December 19, 2007 Special Meeting, the Board took testimony from its planning expert, Ms. Robyn Welch. Ms. Welch testified that the Applicant was requesting three variances pursuant to N.J.S.A. 40:55D-70(d) for the use, height and floor area ratio, and variances pursuant to N.J.S.A. 40:55D-70(c) for front yard setback, rear yard setback, building coverage, impervious coverage, and minimum lot width.

Ms. Welch testified that she agreed with the Applicant that the facility would be

notes that a higher building on the slope of the property which increases in elevation to the west of Kinderkamack Road has a greater visual impact than if for example the proposed building was located on flatter land (or land of a lower elevation) or even property across Kinderkamack Road to the east.

She also testified that the height of the proposed facility, which had been designed to reach 40.3 feet above finished grade, would be out of character with the surrounding development and detrimental to the Master Plan goal of protecting intensities of use, and to the Zoning Code, which only permits a maximum height of 35 feet in any non-residential or business zone; and a maximum height in the residential zone of 32 feet.

With respect to the possibility of imposing reasonable conditions, Ms. Welch noted that the Applicant had not proven that the size of the facility was necessary to provide efficient delivery of service. She testified that the Applicant has not provided any information from a credible expert witness why 76 beds is an efficient number of beds. She explained that she reached this conclusion after Dr. Calkin testified that the facility was divided into 4 houses of 19 residents each, but noted that the number of residents per house could vary. Furthermore, the Applicant had provided testimony that nursing homes typically operated on a 60 bed module, but was unable to provide any factual basis why this facility needed to operate with an increased bed count, other than its own operating margins and economic reasons, particularly when all of the other assisted living facilities in New Jersey that cater exclusively to Alzheimer's disease and dementia patients have between 54 and 60 beds (i.e., 16 to 22 beds less than the 76 beds proposed by the Applicant). She therefore suggested that the Applicant could reduce the bed count of the facility to avoid the need for the FAR variance as well as some of the bulk variances. She also suggested that the Board could consider a height limitation if it were to



2. The premises includes the right of access on adjacent Block 805, Lot 1. However, the access can be eliminated under certain circumstances and therefore it is necessary to provide for access over the subject premises without that adjacent lot.
3. The Premises are approximately 4.35 acres in size and are improved by with the Blauvelt Mansion, a smaller residential structure, and a large grass area on the east side of the Premises;
4. Applicant has proposed to divide the Premises into two lots of with areas of approximately 2 acres each, and develop an assisted living facility for persons afflicted with Alzheimer's disease, dementia, and/or other degenerative mental impairments, on the easterly half of the Premises;
5. The Applicant's proposed use of the easterly half of the Premises is not permitted by the Zoning Code of the Borough of Oradell;
6. The Premises are surrounded on three sides by single-family residential dwellings, many of which are owned by the membership of S.R.R and interested adjacent property owners;
7. The Premises are steeply sloped up from its lowest point along Kinderkamack Road;
8. The Blauvelt Mansion is listed in the Historic Element Plan of the Borough of Oradell Master Plan as being worthy of conservation for its unique contribution to the neighborhood;
9. The development of the easterly half of the Premises with the Applicant's proposed development will require the re-grading of a significant portion of the lot and the export of up to 10,000 cubic yards or more of soil;

17. The facility proposed by the Applicant intrudes into the rear yard and front yard of the lot to be created on the easterly half of the Premises and requires bulk variances;

18. The Premises previously received use variance approval by resolution dated March 28, 1995 from the Board. A material condition of the prior approval was that the Premises remain an oversized 4.3 acres for the zone. The Applicant's proposed subdivision will reduce the lot size of the Blauvelt Mansion by nearly half and retain the non-permitted commercial uses ongoing in the Blauvelt Mansion that were previously approved based upon the size of the premises in its current configuration and retain the additional residence the subject of the 1995 Resolution;

19. Based on the topography of the Premises, the location for the proposed facility, the height and floor area of the proposed facility, the Board concludes that the structure is and will appear to be too massive when viewed from the property lines;

O. WHEREAS, as a result of the site inspection, the testimony adduced at the public hearings, and the exhibits submitted, the Board makes the following conclusions of law:

1. The Board through counsel asked the applicant and any interested party to advise the Board of their position on whether the proposed assisted living center for dementia and Alzheimer's patients was an inherently beneficial use. The Board received the letter of the applicant's counsel, Joseph Basraian, Esq., dated June 12, 2007. The Board also received the letter brief of Stop Residential Rezoning, Inc. ("SRR"), dated June 14, 2007. The Board also considered the recommendations of its counsel.

2. The applicant provides legal support for the proposition that the proposed use of an assisted living facility which treats dementia and Alzheimer's patients is an inherently beneficial use. The applicant has the burden to prove special reasons as the first prong of its use

- (ii) Assisted living;
- (iii) Assisted living for certain specialized disabilities, such as dementia and Alzheimer's;
- (iv) Nursing home;
- (v) Hospital.

Upon reviewing the various degrees of care, going from seniors independently residing, which is more akin to a typical residential use, to seniors requiring care, the Board finds that the proposed facility is an inherently beneficial use.

5. The Board did not initially vote on the issue but permitted the Applicant to proceed based upon its position that an inherently beneficial use was involved. However, the Board did determine at the time of the vote that the proposed use of an assisted living facility, intended solely for dementia and Alzheimer's patients, is an inherently beneficial use.

6. The Board finds that the proposed assisted living facility for residents with Alzheimer's disease, dementia and other forms of degenerative neurological conditions is an inherently beneficial use. There are an increasing number of elderly citizens in Bergen County and an increasing number of persons who will be stricken with some sort of degenerative mental impairment who will require support services and professional care facilities. There are an insufficient number of beds in assisted living and nursing homes that are devoted to housing persons with degenerative mental impairments in Bergen County. The Board therefore concludes that there is a countywide need for facilities that will care for persons with degenerative mental impairments such as Alzheimer's disease and dementia. The very existence of such a facility, because of the clear need for additional beds for persons afflicted with degenerative mental impairments, will enhance the general welfare. Because this use will enhance the general welfare by its very existence, the facility is inherently beneficial.

for a slightly increased buffer to the south side of the property, to eliminate four beds from the facility, which would leave a total of seventy-two (72) beds to be developed, a reduction of the building height by eighteen (18") inches (or even more), and a conservation restriction on the Blauvelt Mansion.

11. In its weighing the need for this type of facility against the impacts to the public good, the Board believes that the facility proposed by the Applicant is simply too big and too intense for the Premises. This was also confirmed by the opinion of the Board's planner which the Board, in weighing the testimony of all planners, has accepted and adopted Ms. Welch's conclusions. The Board finds that there was no testimony presented by a competent expert that the Applicant would need 76 (or 72 beds under the modified proposal) to be able to provide services to its residents efficiently. Instead, the testimony of Dr. Calkins suggests that it might be possible for the Applicant to eliminate one of the residential groupings of 19 beds (since each of the 4 residential groupings are to be separated anyway). Economics does not require the Board to approve a facility the scope and scale the Applicant proposed in the R-1 Zone.

12. The Applicant could reduce the size of the facility, possibly reduce the height of the facility, and reduce the impacts to the adjacent residential properties by shifting the facility towards the interior of the lot and away from the nearby homes and from the nearby public street.

13. Furthermore, the need to locate the facility's parking lot in the side yard serves as a detrimental impact to the residential character of the zone, whereas the office buildings located across the street have located their parking areas in the rear yard away from view of the nearby residential zone as is required by the Zoning Code.

number of substantial deviations of "bulk" requirements, which are more particularly discussed in Section V of this Resolution and will not be repeated. (See p 37.) The Board also concludes that the site cannot accommodate the problems associated with the development of a facility so far in excess of the FAR and height requirements for the R-1, which themselves are inextricably intertwined with the scope of the proposed use. Since there are no hardships that uniquely affect the Premises that would inhibit the development of a conforming project on the Premises, especially give the Board's latitude in prior use variance approvals on the property in recognition of its size, the Board also concludes that the granting of variances pursuant to N.J.S.A. 40:55D-70(c) would not advance the purposes of zoning nor would the benefits of such development substantially outweigh the detriments arising from the facility.

17. The FAR calculated by the Applicant and as shown on Schedule "A" is based upon the upper two floors of the proposed building. It does not include the basement level, which opens to the eastern side of the premises along Kinderkamack Road, but is not visible from the western side of the premises. There may be an issue as to whether all or any part of that lower level should have been calculated as part of the floor area ratio or should have been excluded because it is considered basement. However, it is not necessary to resolve that issue or make that interpretation since the Board has determined that the FAR as proposed by the Applicant is too large (even excluding the existence of the total lower level which it appears the Applicant has treated as a "basement" so that it is not included in the FAR).

#### V. FAIR HOUSING AMENDMENT ACT

P. The Applicant's counsel has raised the issue of the Board's alleged obligation to

circumstances of this case on the property in connection with the size and scope of the building and improvements proposed.

As discussed during the hearing, in reviewing whether the project constitutes an "unreasonable accommodation", the Board of Adjustment may meet any burden it might have (assuming the burden is indeed shifted to the Board) by showing that the development would "(1) 'impos[e] undue financial and administrative burdens;' (2) 'impos[e] an 'undue hardship' on the Township;' or (3) 'requir[e] a fundamental alteration in the nature of the [zoning] program.'" Lapid-Laurel v. Zoning Board of Adjustment of Tp of Scotch Plains, 284 F.3d 442 (3<sup>rd</sup> Cir. 2002), *citing* Hovsons, Inc. v. Township of Brick, 89 F.3d 1096, 1104 (3<sup>rd</sup> Cir. 1996). It appears that the last factor would be most applicable in this case to substantiate a determination that the accommodation for the elderly proposed by the Applicant was not reasonable based upon the facility proposed in relation to the zoning ordinances and requirements applicable in the zone.

The Board recognizes that the Third Circuit has stated that there are two conflicting concerns that must be weighed in examining the "reasonable accommodations" requirement, "(1) effectuation of the statute's objectives of assisting the handicapped; and (2) the need to impose reasonable boundaries in accomplishing this purpose." Hovsons, supra, 89 F.3d at 1104; emphasis supplied. Thus, there is a balancing of the benefits and detriments, which is not unlike the review that is required in the granting of use variances under the Municipal Land Use Law.

The relevant case law (as more particularly set forth in the letter of the Board's counsel dated December 18, 2007) acknowledges that this is a fact sensitive review. The Board has endorsed the proposition that it is appropriate to achieve equal opportunity for the elderly handicapped, but only where there are appropriate circumstances. Similarly, in Lapid-Laurel v. Zoning Board of Adjustment of Scotch Plains, supra, the Board also recognized that obligation.

(13 trips in the A.M. peak hours and 22 trips in the P.M. peak hours). While this is a negative impact for purposes of evaluation of the negative criteria, the Board does not find this alone should be considered a hardship. While this is a detriment, by itself it is not substantial enough to outweigh the beneficial affect of providing elderly housing for those suffering from dementia and Alzheimer's disease.

There are also negative impacts on the blocking of the view of the Blauvelt Mansion. While there may be a hardship, the Board does not think that issue also is sufficient alone to deny the proposed elderly housing. However, aesthetics is an important consideration and was indeed one of the reasons why the Board previously granted the owner of the subject property a use variance in 1995 to add a second principal use (residence) to the property.

The "undue hardship" really is more of a function of the third requirement of showing fundamental alterations of the nature of the zoning scheme. In this case, the "hardship", in terms of the effect on the zoning, is substantial.

In this particular case, the Board carefully reviewed (exclusive of the use variance issues) all variances and relief sought with respect to the bulk variances (including the height variance which were D variances as opposed to a C variances). If you exclude those variances attributed to the existing Blauvelt Mansion and existing non-conformities and conditions, there are really six new variances proposed which all bear on the size, scope, and intensity of the facility. Those six variances deal directly with the size, scope, and intensity of the project. For example, the following variances are implicated:

<u>Variance</u>	<u>Requirement</u>	<u>Proposed on Plans</u>	<u>Deviation</u>	<u>Percentage of Deviation</u>
1. Building Coverage	25%	28.1%	3.1 % +	12.4 %
2. Lot Coverage	40%	54%	14% +	35 %

with an unspecified affect on building aesthetics).

The Board recognizes that the variances and FAR would be slightly reduced by the reduction in the scope of the project by about 5% (decreasing beds from 76 to 72 and its corresponding reduction of the footprint). However, simply put, the proposed project was just "too big" for the subject property, even if there was a reduction of 5%, especially in the R-1 Zone adjacent to residential homes, which would have substantially changed the character of the residential zone, the preservation of which is an objective of the Master Plan.

The Board need not decide what size the project would have been appropriate. The Applicant made a proffer of a reduction which was not sufficient. Acting Chairperson Stubblebine indicated he thought a reduction of at least 20% was warranted. However, based upon a majority vote, four of the five Board members have found that the project as proposed, was simply too big as proposed in that particular zone, even with the slight reduction proffered by the Applicant at the end of the case.

As stated in Bryant Woods Inn, Inc. v. Howard County, et al, 124 F. 3<sup>rd</sup> 597(4<sup>th</sup> Cir 1997),

In determining whether the reasonableness requirement has been met, the Court may consider as fact the extent to which the accommodation would undermine the legitimate purpose and effects of existing zoning regulations and the benefits the accommodations would provide to the handicapped.

As the Fourth Circuit held, the "equal opportunity" requirement mandates not only the level of benefit that must be sought by a reasonable accommodation but also provides a limitation on what is required. The FHA does not require accommodations that increase the benefit to a handicapped person above that provided to a non-handicapped person with respect to matters unrelated to the handicapped. As the United States Supreme Court noted in Southeastern Community College v. Davis, 442 U.S. 397 (1979), the requirement of "even-handed treatment



Board in its deliberation. The Applicant's planner did not address the fact that there is no evidence or indication that this is a Board (in a Borough) that does discriminate in any way with houses for the elderly. The Board had approved both elderly housing projects previously presented to it, one of which has been constructed. The comparison of those other senior housing projects to the proposed project is attached hereto and made a part hereof as Exhibit "A".

The Board approved the Mavco project (Exhibit A, par. 2) that was in an existing building which the developer sought to convert to a nursing home with 30 residential apartments for the elderly needing assistance. That project was never constructed. However, 29 beds per acre was approved for the Edron application, which is currently operated as a Care One nursing home (the parent company or affiliate of the applicant) (and 39 beds per acre was approved in the Mavco project in an existing building, but on more than twice the land area). The proposed project, however, provided for 37.44 beds per acre (which can be reduced to 35.47 beds per acre considering the willingness of the applicant to further reduce the number of beds from 76 beds to 72 beds).

When you compare the 29 beds per acre approved for the current Care One facility versus the 35.47 beds per acre sought for the modified 72 bed proposal by the Applicant (although no details of the affect on the site plan for this reduction was presented), the difference is 6.46 beds per acre for the 2.03 acre parcel. If the same ratio of the number of beds to the number of acreage were utilized as "bed density" as the "Care One nursing home", this would have warranted a reduction of about 13 more beds (i.e., reduction from 72 beds to 59 beds). Such a reduction would have also been consistent with the Board Planner's testimony of the size of the dementia and Alzheimer's facilities she reviewed as not exceeding 60 beds as well as the

did not indicate it was willing to reduce the size of the building in half (which might have reduced the number of bedrooms in half as opposed to a 4 bedroom reduction). The Applicant did not propose a number of group homes similar in appearance to a residential home that each had a number of patients (similar to the group homes like Potomac Homes which Applicant's witness referred to).

It is clear the proposed 58,466 square foot project (44,666 square feet when the basement is excluded), represented too large a project when compared to the two elderly housing projects approved by the Board (putting aside the issue of the numerous bulk variances required). When considering the scope of the project, the fact that the proposed building substantially exceeded building coverage, impervious coverage, and the floor area ratio, the building itself was simply too large. When you add the height variance (although the Applicant would have reduced the height but made the building less aesthetically pleasing), and add longer rows of parking, the building and improvements were too much out of scale with the homes in the R-1 Zone. Again, this was not a case where the developer proposed group homes which may have better fit based upon their appearance and similarities to a single-family home. The Applicant proposed a large building which substantially exceeded not only what was permitted in the R-1 Zone, but also what would be permitted in other zones (as for example when you review the FAR requirements in all zones). The proposed structure itself is too massive a building at that location. The magnitude is exhibited by the number of required variances. The proposed project would cause one of the largest soil movement permits issued, which also has an adverse impact on the neighborhood.

property and requires a modification of the 1995 use variance approval previously granted. One of the major reasons for granting the prior use variance permitting the second dwelling was the existence of the space in front of the Blauvelt mansion. However, the applicant now proposes to eliminate that benefit, which was the substantial reason in the Board's prior approval. That second dwelling has already been constructed, and the owner of the property has received the benefits of the prior approval. Based upon the project as proposed, and the substantial affect on the views and aesthetics (notwithstanding a reduction in the height which would negatively impact the aesthetics as a flat roof line was approached the lower the building was designed), the Board will not modify the prior use variance application based upon the building and layout as proposed. This is an independent reason for denial, irrespective of the Board's balancing of the benefits of this inherently beneficial use with the detrimental impact as previously stated.

\* \* \*

NOW, THEREFORE, BE IT RESOLVED, that the Board therefore determines that application of Blauvelt Associates, LLC for a 76 bed assisted living facility limited to dementia and Alzheimer's patients (as may be amended to be reduced to 72 beds) is hereby DENIED.

A motion to approve the Application, grant a modification of the conditions set forth in the prior Resolution dated March 28, 1995, grant a major subdivision of Block 805, Lot 2 into two lots as shown on Exhibit A-9.1, and multiple bulk and use variances required by the Applicant's proposal for the construction and use of a facility within the R-1 zone to function as an assisted living facility for residents with Alzheimer's disease, dementia and other related degenerative mental impairments, with a maximum of 72 beds and an caregiver-to-resident ratio of approximately 8, with other conditions as set forth in the record, was denied.

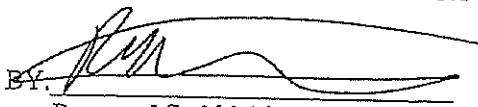
A motion was thereafter made by James Koth and seconded by Richard Buff to deny the use variance, site plan and subdivision approvals, and deny approval of the bulk variances, waivers, and other relief. That motion was approved by a vote of four in favor of denying the application and one vote opposing the approval of the resolution denying the application.

	FOR	AGAINST	ABSTAIN	ABSENT	NOT QUALIFIED TO VOTE
Joseph T. Polyniak, Chairman					X
Raymond Stubblebine, Vice Chairman	X				
Joseph Cangelosi, Secretary		X			
Steven Lang					X
Marvin Michelman					X
James Sattely					X
Richard Buff	X				
Rita Walker, Alt. #1					X
Andrea Hanlon, Alt #2	X				
James Koth (temporary member)	X				

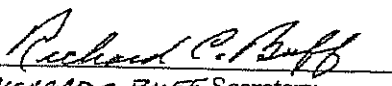
*February 11*      *ACB*  
Dated: ~~January~~ 28, 2008      *RF*

Of the four members eligible to vote for the Resolution denying the application, one is no longer a Board member, leaving three remaining Board members eligible.

ORADELL BOARD OF ADJUSTMENT

BY:   
Raymond Stubblebine, Acting Chairperson

CERTIFIED TO BE A TRUE COPY

BY:   
RICHARD C. HUFF, Secretary  
*for*