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June 24, 2026

Board Secretary
Atlantic City Zoning Board
City Hall – Suite 508, 1301 Bacharach Boulevard
Atlantic City, NJ 08401

**SUBJ: PRELIMINARY & FINAL MAJOR SUBDIVISION APPROVAL W/ 'd-1' (USE) & 'c' VARIANCE RELIEF
CITY OF ATLANTIC CITY
109-119 N. MARYLAND AVENUE & 835-837 ARCTIC AVENUE
(BLOCK 312, LOTS 7, 8, 9, 10, 12.01, 12.02, 12.03, 12.04, & 12.05)
(ARH FILE: 6730028.01)**

Dear Mr. / Ms. Secretary:

On behalf of the City of Atlantic City **ARH ASSOCIATES** is pleased to submit this Planning Report and Application for the above captioned. Details follow:

I. PROJECT OVERVIEW

There exists in the City of Atlantic City, Atlantic County, New Jersey ("City"), an (approximately) 97,855 s.f. (2.25 acre), 9 lot tract of land designated as Block 312, Lots 7, 8, 9, 10, 12.01, 12.02, 12.03, 12.04, & 12.05 on the City's municipal tax map. The tract is bound by N. Maryland Avenue, Arctic Avenue, and Clinton Avenue, and is split between the City's Residential Multi-Family (RM-2) and Neighborhood Commercial (NC-1) Zoning Districts.

The property is currently owned by the City of Atlantic City and is vacant land.

The City proposes to consolidate and resubdivide the tract into 6 lots for transfer to a private developer for the creation of affordable single-family housing.

II. PLANNING ANALYSIS

A. Use

Lots 7, 8, 9, 10, 12.01 & 12.02 are located in the City's Residential Multi-Family (RM-2) Zoning District, which is governed by §163-56. Single-family detached dwelling units are permitted in the RM-2 Zone.

Lots 12.03, 12.04 & 12.05 are located in the City's Neighborhood Commercial (NC-1) Zoning District, which is governed by §163-59. While generally a commercial Zone, residential uses in the form of multiple-family dwellings at the second floor or above, single-family attached dwellings, and single-family townhouses are permitted.

Single-family detached dwelling units are not permitted in the NC-1 Zone. **'d-1 (Use) Variance relief is therefore required.**

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B. Area & Bulk Standards

The Preliminary & Final Major Subdivision necessary to create the 6 single-family lots conforms with Ordinance requirements as follows (actual development of the 6 dwellings will follow via individual-lot Plot Plan review).

ITEM	RM-2 ¹	NC-1 ²	PROPOSED		CONFORMANCE STATUS	
Lot						
Min. Lot Area	3,000 sf		Lot A	3,838 sf	Conforms	
			Lot B		Conforms	
			Lot C	3,824 sf	Conforms	
			Lot D	3,800 sf	Conforms	
			Lot E		Conforms	
			Lot F		Conforms	
Min. Lot Width (Measured at the Building Setback Line)		No Regulation Established	Lot A	38'	n/a	
			Lot B		n/a	
			Lot C		n/a	
	40'		Lot D		Variance Required	
			Lot E		Variance Required	
			Lot F		Variance Required	
Max. Residential Density (units/net acre)		No Regulation Established	Lot A	13.7	N/A	
			Lot B		N/A	
			Lot C		N/A	
	24.2		Lot D		Conforms	
			Lot E		Conforms	
			Lot F		Conforms	
Max. Lot Coverage						
Principal Building		40%	Lot A	3	Undetermined at this Time	
			Lot B			
			Lot C			
	35%		Lot D			
			Lot E			
			Lot F			
Accessory Building		20%	Lot A			
			Lot B			
			Lot C			

¹ §163-56 Single-family developments in Multifamily Districts. Except for required yards, single-family developments permitted in Multifamily Districts shall be developed in accordance with the regulations applicable in the R-3 District. Front and Rear Yards shall comply with the minimum requirements of the Multifamily District within which such developments are located. Side Yards shall comply with the most restrictive Side Yard requirements applicable in either district.

² §163-59

³ To be determined at Plot Plan review. Any exceedance of Ordinance requirements will necessitate variance relief.

Item	RM-2 ¹	NC-1 ²	Proposed		Conformance Status	
Accessory Building	10%		Lot D	3	Undetermined at this Time	
			Lot E			
			Lot F			
Aggregate		50%	Lot A			
			Lot B			
			Lot C			
	40%		Lot D			
			Lot E			
			Lot F			
Principal Building						
Min. Front Yard Setback		20'	Lot A	Arctic Ave.: 7'	Variance Required	
				Maryland Ave: 15'	Variance Required	
				Clinton Ave: 15'	Variance Required	
			15'	15'	Lot B	Variance Required
					Lot C	Variance Required
	Lot D	Conforms				
	Lot E	Conforms				
			Lot F	Conforms		
Min. Side Yard Setback (one/both)		15' ⁴	Lot A	5'	Variance Required	
		15' ⁴	Lot B	5'/12'	Variance Required	
		25' ⁵	Lot C		Variance Required	
	5'/12'	Lot D	Conforms			
		Lot E	Conforms			
		Lot F	Conforms			
	Min. Rear Yard Setback		6	Lot A	7	N/A
Lot B				N/A		
Lot C				N/A		
60'			Lot D	N/A		
			Lot E	N/A		
			Lot F	N/A		
Max. Building Height	35'		Lots A-F	3	Undetermined at this Time	

⁴ Where no Side Yard is required, but one is provided, such yard shall be not less than 20' in width, except that such a yard in the Neighborhood Commercial Districts may be 15' in width.

⁵ A Side Yard of 25' shall be provided along any Side Lot Line abutting a residential district boundary line.

⁶ The minimum Rear Yard requirements in an NC District shall be 25' when abutting a residential district boundary line.

⁷ Lot A is a Double Frontage Lot and a Corner Lot having 3 Front Yards, 1 Side Yard, and no Rear Yard. Lots B-F are Double Frontage Lots having 2 Front Yards, 2 Side Yards, and no Rear Yards.

Item	RM-2 ¹	NC-1 ²	Proposed		Conformance Status
Maximum Floor Area Ratio		0.60	Lot A	1.80	Variance Required
			Lot B		Variance Required
			Lot C		Variance Required
	1.80		Lot D	3	Undetermined at this Time
			Lot E		
			Lot F		
Accessory Structures (§163-68)					
Yard Location		No Regulation Established	Lot A	Front	N/A
			Lot B		N/A
			Lot C		N/A
	Rear		Lot D		Variance Required
			Lot E		Variance Required
			Lot F		Variance Required
Min. Front Yard Setback		20'	Lot A	Arctic Ave.: 7'	Variance Required
				Clinton Ave.: 5'	Variance Required
			Lot B	5'	Variance Required
	Lot C	Variance Required			
	15'		Lot D		Variance Required
			Lot E		Variance Required
		Lot F	Variance Required		
Min. Side Yard Setback		15' ⁴	Lot A	5'	Variance Required
			Lot B		Variance Required
			Lot C		Variance Required
	5' ⁸		Lot D		Conforms
			Lot E		Conforms
			Lot F		Conforms
Min. Rear Yard Setback		9	Lot A	7	N/A
			Lot B		N/A
			Lot C		N/A
	3'		Lot D		N/A
			Lot E		N/A
			Lot F		N/A
Min. Setback from Principal Structure	10'		Lots A-F	3	Undetermined at this Time
Max. Building Height	15'		Lots A-F	3	
Max. Fence Height	4'		Lots A-F	6' ¹⁰	Variance Required

⁸ Per §163-68G.(2) In all residential districts and on all lots having any Side Lot Line in common with a residential district boundary line, then no portion of the Accessory Structure or Use shall be closer than 5' to any Side Lot Line and 3' to any Rear Lot Line.

⁹ The minimum Rear Yard requirements in an NC District shall be 25' when abutting a residential district boundary line.

¹⁰ **A variance is requested to allow for 6' high fences in the Front Yard off of Clinton Avenue. Any fence proposed off of Maryland Avenue or Arctic Avenue shall comply with the ordinance.**

ITEM	RM-2 ¹	NC-1 ²	PROPOSED	CONFORMANCE STATUS
Off Street Parking				
Min. Parking Spaces	<u>Schedule IV</u> Min. 1 space/d.u.		3	3
	<u>RSIS</u> Max. 2.5 spaces/d.u.			

III. PLANNING COMMENTS

- A. As required under the Preliminary Subdivision Checklist Section No. 163-97C(10), statements addressing each of the following standards are provided:
1. §163-127: Consistency with other standards and regulations is addressed throughout this report.
 2. §163-128: No public improvements are proposed as part of the subdivision application.
 3. §163-129: The proposed subdivision will not result in any undue adverse physical, economic or social impact upon its immediate environs or the general health, safety and welfare of the City. The proposed subdivision will facilitate the construction of affordable single-family housing on otherwise vacant lots.
 4. §163-130: The site is adequately served by existing public improvements.
 5. §163-131: The application is unable to fully comply with Standard for visibility at street corners and is requesting waiver. The City will work with the City professionals to provide an appropriate sight triangle.
 6. §163-132: As a subdivision application, no energy efficiency improvements are proposed.
 7. §163-133: The subdivision application meets the requirements and/or has requested a variance/waiver from the applicable standard as further described in this report.

IV. VARIANCE(S) & DESIGN WAIVER(S)

- A. Applicant's requires Variance relief under N.J.S.A. 40:55D-70(d) (commonly referred to as a 'd' or 'Use' variance) for a use not permitted in the NC-1 Zone for Lots 1-3.
- B. It is anticipated that the 6 single-family dwellings will require Variance relief under N.J.S.A. 40:55D-70(c) (commonly referred to as a 'c' or 'bulk' variance) for:
- Minimum Lot Width: Proposed Lots D., E. and F.
 - Minimum Front Yard Setback (Principal Building): Proposed Lots A (Arctic, Clinton & Maryland Avenues), B. and C.
 - Minimum Side Yard Setback: Proposed Lots A, B. and C.
 - Maximum Floor Area Ratio: Proposed Lots A, B. and C.

- Accessory Structure in a Front Yard: Proposed Lots D., E. and F.
- Minimum Front Yard Setback (Accessory Building): All Proposed Lots.
- Minimum Side Yard Setback (Accessory Building): Proposed Lots A, B. and C.
- Maximum Fence Height: All Proposed Lots.

C. Variance Justification

In order for a Board to grant a variance, an Applicant must demonstrate, to the Board's satisfaction, that: (1) such action will relieve peculiar and exceptional practical difficulties or exceptional and undue hardship upon the developer of the subject property resulting from the strict application of the zoning ordinance (typically known as a Hardship Variance); **OR** (2) that granting a variance to allow departure from the zoning ordinance **would advance one of the purposes of the Municipal Land Use Law** (N.J.S.A. 40:55D-1 et seq. [MLUL]) and that the **benefits of the deviation would substantially outweigh any detriment** (typically known as the Special Reasons). Collectively, these are known as the Positive Criteria.

An Applicant must also demonstrate, to the Board's satisfaction, that such variance can be granted **without substantial detriment to the public good and without substantial impairment to the intent and the purpose of the municipality's zone plan and zoning ordinance** (i.e., Master Plan and Zone Scheme). This is known as the Negative Criteria.

For a 'd' request, an Applicant must also demonstrate, to the Board's satisfaction, that the site is **particularly well-suited** to the proposed use.

Both the Positive Criteria and Negative Criteria must be satisfied in order for the Board to grant Variance relief.

1. C-1 Variance Justification

The triple frontages for proposed Lot A and the double frontages for proposed Lots B-F create *exceptional and practical difficulties* because the multiple front yard setback requirements restrict the placement of a dwelling and customary accessory improvements. As a result, strict application of the ordinance would make it impractical to reasonably site a single-family dwelling on the proposed lots without variance relief.

2. C-2 Variance Justification

The following addresses the Positive and Negative Criteria and the basis upon which we submit that the requested variance relief can be granted.

a. Positive Criteria

Under N.J.S.A. 40:55D-2, the MLUL enumerates 17 purposes which constitute **special reasons** for the grant of a Variance. As applied to this Application, the grant of the requested relief would:

- (1) **Constitute municipal action to guide the appropriate use or development of lands in a manner which will promote the public health, safety and general welfare.** [N.J.S.A. 40:55D-2a.]

One way to promote the general welfare is to return a neglected property to active productive status, and to continue improvements into the future.

All of the properties are owned by the City, and while they bring in no revenue, the City is responsible for their maintenance. By subdividing the properties for the transfer to a private developer for single family homes the City will eliminate the negative influences and bring otherwise unproductive properties into productive use again.

Additionally, the provision of affordable housing certainly promotes the general welfare.

Accordingly, the grant of the variance would *constitute municipal action to guide the appropriate use or development of lands in a manner which will promote the public health, safety and general welfare; thereby satisfying MLUL Purpose 'a.'*

(2) ***Provide adequate light, air, and open space.*** [N.J.S.A. 40:55D-2c.]

While subject to Plot Plan review, the 6 proposed residential lots are not likely to exceed the coverage limits established for the RM-2 Zone. The proposed residential lots in the NC-1 Zone ~ with the requested variances ~ will present a similar bulk profile as those in the RM-2 Zone, and will provide more light, air and open space than if they were developed under the NC-1 requirements. Since it is assumed that the RM-2 regulations advance the purposes of the *Municipal Land Use Law*, such coverage, by definition, *provides adequate light, air and open space; thereby satisfying MLUL Purpose 'c.'*

(3) ***Promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.*** [N.J.S.A. 40:55D-2e.].

Creating 6 single-family homes within an existing residential neighborhood *continues the existing pattern of population densities and concentrations established* in this section of the City. (Re)development of these lots within an existing residential neighborhood *will contribute to the well-being of persons, neighborhoods and communities, and preserve the environment; thereby satisfying MLUL Purpose 'e.'*

(4) ***Encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies.*** [N.J.S.A. 40:55D-2f.].

The grant of the requested relief would allow for the transfer of the subject properties from the City to a private entity and the return of the land to the tax rolls. The City would no longer be responsible for maintenance, and what is currently a liability would become an asset. The proposed subdivision *thereby constitutes an appropriate and efficient expenditure of public funds by coordinating the need for public development with land use policies and satisfying MLUL Purpose 'f.'*

(5) ***Provide sufficient space in appropriate locations for a variety of ... residential uses, according to their respective environmental requirements in order to meet the needs of the citizens of Atlantic City.*** [N.J.S.A. 40:55D-2g.]

With the exception of Lot 12.03, the existing lots are undersized (Lot 7 is particularly undersized at 0.5' x 100') and therefore not developable without variance relief. Such relief will permit the proposed subdivision and provide sufficient space to construct 6 new single-family residences within an existing residential neighborhood and thus constitute *an appropriate location* for these uses while respecting the environmental requirements of this section of Atlantic City; ***thereby satisfying MLUL Purpose 'g'.***

- (6) ***To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land. [N.J.S.A. 40:55D-2m.]***

Atlantic City is facilitating the development of 6 new, affordable single-family residences by subdividing City owned land and requesting the variances required to create buildable lots for these dwellings. All of the proposed lots have frontage on both North Maryland Avenue and Clinton Avenue, with proposed Lot A also having frontage on Arctic Avenue. Due to the nature of the lots having multiple frontages, variance relief is required to create buildable lots with permitted and typical accessory structures.

The City, by requesting these variances as part of the subdivision process, will lessen the cost of such development on the future private developer; ***thereby satisfying MLUL Purpose 'm.'***

b. **Negative Criteria**

Understanding that any change of land use will create an impact, the question under the Negative Criteria is: *Can the requested relief be granted without **substantial impact** to the public good, the City's master plan and zone plan/zoning ordinance?*

(1) Public Good

The statements in support of the Positive Criteria apply to the public good. The requested relief can be granted without detriment, let alone ***substantial detriment***, to the public good.

(2) Master Plan

The City's most recent Master Plan Reexamination Report was adopted in April 2016¹¹

i. The 2016 Reexamination recognized:

Housing stock needs to be upgraded. Homeownership, both primary and second homes, needs to increase.

The City needs to attract new residents and to keep residents, in particular 25-40 year olds, who will invest in the community.

ii. Recommendations to accomplish this included:

Encourage redevelopment on under-utilized and vacant properties throughout the City. ...***aggressively foreclose and facilitate redevelopment.***

¹¹ Master Plan Reexamination Report, April 2016 Prepared for City of Atlantic City. Prepared by Maser Consulting P.A.

Demolish or **reconstruct substandard properties in the City**, particularly highly visible and/or those affecting neighborhoods' quality of life using aggressive code enforcement and condemnation when necessary.

Create attractive and well-served neighborhoods **with a mix of housing types**, to provide a high quality of life for residents.

Preserve, protect and **ensure the availability of decent, safe and adequate housing units of different types, sizes, and price ranges through new and compatible infill residential development in appropriate locations** to meet the needs of current and future residents. This report recommends strategies to create a wider variety of housing types that are reasonably priced for the market. This is expected to result in a more balanced economic base to support the local economy, benefitting all residents.

Encourage for sale home construction, including second homes, on vacant lands in both resort commercial areas and neighborhoods.

Solicit a variety of housing types and prices to attract of balanced mix of households and income levels.

This proposal is consistent with the multiple recommendations within the Master Plan Reexamination for the City to facilitate the development of housing and the redevelopment of vacant land. The future development of single-family homes on these properties will add to the mix of housing types already in this section of the City.

Accordingly, the proposed subdivision and related variance relief is consistent with and advances the City's Master Plan.

(3) Zone Plan / Zoning Ordinance

Proposed Lots D-F are in the RM-2 Zoning District, which permits single-family dwellings and is therefore consistent with the City's Zone Plan. The requested bulk relief for these properties is related to the Lots' Double Frontage and allows for Accessory Structures in a Front Yard. Permitting 38'-width lots where 40' is required is considered de minimis relief.

Proposed Lots A-C adjoin the RM-2 Zone, where single-family dwellings are permitted. Directly to the east, within the NC-1 Zone, the existing development includes duplexes; farther east, at Delaware Avenue, the zoning changes to RM-1, which also permits single-family dwellings. In addition, this portion of the NC-1 Zone is already developed with single- and two-family dwellings. Accordingly, the surrounding area either contains single-family housing or permits it, and the proposed single-family development is therefore consistent with both the existing neighborhood pattern and the surrounding zoning.

For the reasons detailed above and elsewhere in this Report, **the requested relief can be granted without detriment, let alone substantial detriment, to the Zone Plan and Zoning Ordinance.**

(4) Inherently Beneficial Use

In November 2009, the New Jersey Legislature amended the definitions section of the *Municipal Land Use Law* (N.J.S.A. 40:55D-4) to define an Inherently Beneficial Use as:

...a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, childcare center, group home, or a wind, solar or photovoltaic energy facility or structure.

If a use is held to be Inherently Beneficial, it presumptively satisfies the Positive Criteria for grant of a use variance. More specifically, Inherently Beneficial Uses are assumed to serve the zoning purpose of promoting the general welfare. Such presumption is rebuttable depending on the facts at hand.¹²

- i. New Jersey caselaw classifies affordable housing as an Inherently Beneficial Use¹³. It therefore presumptively satisfies the Positive Criteria for the grant of the requested variances.
- ii. For Inherently Beneficial Uses, the Negative Criteria analysis is somewhat different than for non-Inherently Beneficial Uses. In Yahnel v. Bd. of Adjustment of Jamesberg¹⁴ and the subsequent Sica v. Board of Adjustment of Wall¹⁵, the Court established what is commonly referred to as the SICA Balancing Test, under which a Board must:

- Identify the public interest at stake:

The public interest here is substantial. The grant of the requested variances will facilitate the creation of 6 descent, safe and affordable single-family dwellings in the City, return dormant City-owned properties to productive use, and further the City's planning objective of neighborhood reinvestment and homeownership opportunities.

- Then identify any detrimental effects that would result from the grant of the variance:

Potential adverse consequences from granting the requested relief are limited and primarily relate to the departure from strict NC-1 use

¹² New Jersey Zoning & Land Use Administration, 2026 Edition. William M. Cox & Stuart R. Koenig, Jonathan E. Drill & Lisa A. John-Basta (§32-5) ("Cox").

¹³ See, among other cases

- Sica, supra, 127 N.J. at 165 (citing DeSimone v. Greater Englewood Hous. Corp., 56 N.J. 428, 442 (1970)).
- Homes of Hope, supra, 409 N.J. Super. at 336
- Holmdel Builders Ass'n v. Twp. of Holmdel, 121 N.J. 550, 568 (1990)

¹⁴ 79 N.J. Super. 509 (App. Div.) cert. den. 41 N.J. 116 (1963)

¹⁵ 127 N.J. 152, 160-167 (1992).

regulations and the bulk deviations associated with the lots' existing double- and triple-frontage conditions. Specific impacts identified are a reduced front-yard setback on certain lots, narrower lot widths for Lots D-F, and the placement of customary accessory improvements (including fencing) in areas treated as front yards because of the multiple frontages.

However, these impacts are moderated by the fact that the proposed homes are to be single-family, will be consistent with the surrounding neighborhood pattern, and will be less intense than many uses otherwise permitted in the NC-1 Zone.

- Then determine if it could reduce any detrimental effects by imposing reasonable conditions:
 - ***No reasonable conditions have been identified for the requested 'd' Variance. Without such relief, the development of affordable housing cannot occur on the NC-1 Zoned lots.***
 - ***The requested Minimum Lot Width Variance could be eliminated by reducing the number of proposed lots. This, however, would reduce the number of affordable housing units that could be developed.***
 - ***Minimum Front Side and Rear Yard Setbacks Variances and the Location of Accessory Structures Variance are caused by the double- and triple-frontages of the lots in question. There are no reasonable conditions that would eliminate the need for this relief.***
 - ***The FAR Variance is requested so that all proposed housing units will be similar. Otherwise, the proposed houses on Lots A., B. and C. must be considerably smaller than the houses on Lots D., E. and F., and perhaps too small to provide appropriate family housing.***
 - ***The Front-Yard Fence Height Variance along Clinton Avenue is caused by the multiple frontage of the lots. While the Board could limit the size of these fences, such a condition would impact site security along a street (Clinton Avenue) with limited visibility. This office recommends that such a condition would not be reasonable.***
- Then weigh the public interest against the public detriment and determine whether, on balance, the grant of the variance with the imposed conditions would cause a substantial detriment to the public good.

When balanced under Sica, the public interest in granting the variances substantially outweigh the limited adverse impacts. The subdivision as proposed delivers a recognized Inherently Beneficial Use in the form of affordable housing, removes vacant land from prolonged nonproductive status, and advances the City's Master Plan goals for redevelopment, housing choice and neighborhood stabilization.

By contrast, the identified impacts are modest, largely site-design related, and largely stem from the properties' existing frontage configuration rather than from any incompatibility of the proposed homes with the surrounding community.

On balance, the grant of the requested relief would not cause a substantial detriment to the public good. The negative criteria is therefore satisfied.

(5) Site Suitability

For a 'd' request, an Applicant must demonstrate, to the Board's satisfaction, that the site is *particularly well-suited* to the proposed use.

Again, the subject properties are located in the RM-2 and NC-1 Zones, both of which permit residential dwellings, and the predominant land development pattern to the north is residential.

The addition of 6 single-family dwellings to this area is consistent with existing development patterns that provides a mix of housing types. ***Accordingly, this office recommends that this site is particularly well-suited to the proposed use.***

Respectfully Submitted,
ARH ASSOCIATES
by



Stuart B. Wiser, PP/AICP
Vice President of Planning & Environmental Services

CW: