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**TO:** City of Orange Township Zoning Board of Adjustment  
**FROM:** Gerard M. Haizel, PP, AICP, Board Planner  
**RE:** **MW-24-004 – 7-11 Berg Place (aka 7-11 Tremont Avenue)  
Block 6106, Lot 19, 20 & 21**  
**DATE:** December 9, 2024 – **REVISED from Report dated December 2, 2024**

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The following is prepared on behalf of the City of Orange, Zoning Board of Adjustment. The information provided herein is for advisory purposes only and is intended to assist the Board's decision-making process. Below are descriptions of the project based on the supplied plans and documentation as well as commentary on issues evident from them.

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### Items Reviewed

In preparation of this report, I have reviewed the following documents:

- ✓ City of Orange Township Zoning Board of Adjustment Application dated February 8, 2024.
- ✓ Plans titled Proposed 7 Unit Apartments, Nwaiwu Properties, LLC, 7-11 Tremont Avenue, aka 7-11 Berg Place, Orange, New Jersey, Block: 6106, Lot: 19, 20 & 21, consisting of six (6) sheets, dated 2-29-2024, **with revision dated 11-14-2024**, prepared by Matthew G. Evans of Evans Architects .
- ✓ Boundary and Topographic Survey, Prepared for Block 6106, Lots 19-21, 7-11 Berg Place, City of Orange Township, Essex County, New Jersey, consisting of one (1) sheet, dated 8-4-2023, prepared by Anthony Maltese, PE, PLS, PSM, PP, CME.
- ✓ Technical Review Committee Member Report from Captain John Petroccia, Orange Fire Department.

### Project Summary

On property located within the City's ***MX-1 (Mixed-Use Low Density Residential and Neighborhood Commercial) Zone***, the applicant ***Nwaiwu Properties, LLC***, proposes to construct a new 3-story seven-unit multifamily dwelling on an existing "landlocked" vacant lot. The proposed low-rise multifamily dwelling **is permitted** in the MX-1 zone. However,



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the proposed development, does not meet all the bulk and design standards for this use and building type. Site plan approval is required for this application.

### Required Variances/Waivers

- Pursuant to the Municipal Land Use Law of 1975, (MLUL) **N.J.S. 40:55D-35** no permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. The applicant proposes the development of a multifamily dwelling building that does not directly abut a street. **A variance is required to permit the issuance of a building permit to the proposed dwelling structure that does not abut a street.**
- Pursuant to the City of Orange Development Regulations **§210-24.3 – Low-Rise Multifamily**, a minimum lot area of 10,000-SF is required, and the applicant proposes a lot area of 6,626-SF. **A C-variance is required to permit a low-rise multifamily dwelling on a smaller lot than required.**
- Pursuant to the City of Orange Development Regulations **§210-24.3 – Low-Rise Multifamily**, a minimum lot width of 100-feet is required, and the applicant proposes a lot width of 72.59-feet. **A C-variance is required to permit a low-rise multifamily dwelling on lot with a lesser width than required.**
- Pursuant to the City of Orange Development Regulations **§210-24.3 – Low-Rise Multifamily**, a minimum side yard setback of 10-feet is required, and the applicant proposes a side yard setback of 8.8-feet on the western side. **A C-variance is required to permit a low-rise multifamily dwelling on lot with a lesser side yard setback than required.**

### Project Description

The subject site is a vacant 6,626-SF lot comprised of three (3) tax lots. The applicant proposes to construct a new 3-story, multifamily dwelling. The subject lot is completely landlocked, with no direct street frontage. Access to the site is by way of an existing 10.30-foot-wide asphalt-paved roadway from the Tremont Avenue frontage, where there is an existing curb cut. The roadway extends between two dwellings which front on Tremont Avenue and appears more like a driveway from the Tremont Avenue frontage. This roadway provides access to three (3) other existing properties located to the east of the subject site, which are also landlocked and for which this is the only means of ingress/egress.



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The proposed building will be setback 27.6-feet from the front (northern) property line, 15.4-feet to 19.3-feet from the rear property line and 10-feet and 8.8-feet from the eastern and western side property lines respectively.

A parking area is proposed at the front of the proposed dwelling, where seven (7) stalls are proposed, including one (1) ADA-compliant stall, which will also be equipped with EV-charging. A second regular stall will also be equipped with EV-charging. Each regular parking stall will measure 8.5-feet by 18-feet.

A paved 4-foot-wide sidewalk will extend along the eastern and western sides of the building, as well as along the rear. Eight (8) HVAC condenser units are proposed in the paved area adjacent to the southwestern corner of the building. A recycling and refuse container storage area is proposed in the opposite, southeastern area. The paved sidewalk will extend along the front of the building in the front yard adjacent to the parking stalls, with a walkway extending to the entry to the building. A 6-foot-tall vinyl fence is proposed along the rear and side property line.

The entry to the building will be located at the center of the front façade, where there is a door that will open to a hallway, which will extend to the rear of the building, where there is a second door which will open to the rear yard. On the eastern side of the hall is proposed a staircase up to the 2<sup>nd</sup> and 3<sup>rd</sup> floors. At the rear of this staircase is a door that will access an enclosed staircase down to a proposed basement.

The basement will span the full footprint of the building, with the central hallway dividing eastern and western sides, as it did on the 1<sup>st</sup> floor. In the southeastern area of the basement is proposed a 19.75-foot by 21.6-foot fitness center. The northeastern area, as well as the entire western side of the basement is designated for tenant storage. A utility room is proposed in the northeastern area adjacent to the front wall of the basement.

On the eastern side of the 1<sup>st</sup> floor entry hallway is proposed two (2) studio apartments, measuring 440-SF and 460-SF respectively. On the opposite (western) side of the hallway is proposed a 920-SF two-bedroom apartment. This apartment will include two (2) bedrooms, a kitchen, living/dining room and 1½ bathrooms.

The 2<sup>nd</sup> and 3<sup>rd</sup> floors will be accessible from the staircase from the entry hallway. Both floors will have identical layouts, with a 920-SF two-bedroom apartment proposed on each side of the central hallway on each floor. These apartments will have a similar layout to the two-bedroom apartment on the 1<sup>st</sup> floor.



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### Exterior Finishes

- The front façade will be finished with a combination of James Hardie cedar shake wood siding, James Hardie wood siding and brick veneer. The side and rear facades will be finished James Hardie wood siding.

### Landscaping

- One (1) Green Vase Zelkova shade tree is shown on the planting list but is not shown on the landscape plan.
- Nineteen (19) Shore Juniper shrubs are proposed in the front yard, in a row along the front façade of the house and a row along the front of the parking stalls.
- Fourteen (14) Barberry Golden Daybreak shrubs are proposed in the front yard on either side of the row of parking stalls.

### Lighting

- Eight (8) Hubbell Model 4836bz, Wall Mounted Lamp with .50-watt Compact Florescent fixtures with dusk to dawn photocontrol, is proposed on the exterior of the proposed building, with two (2) each proposed on each facade.



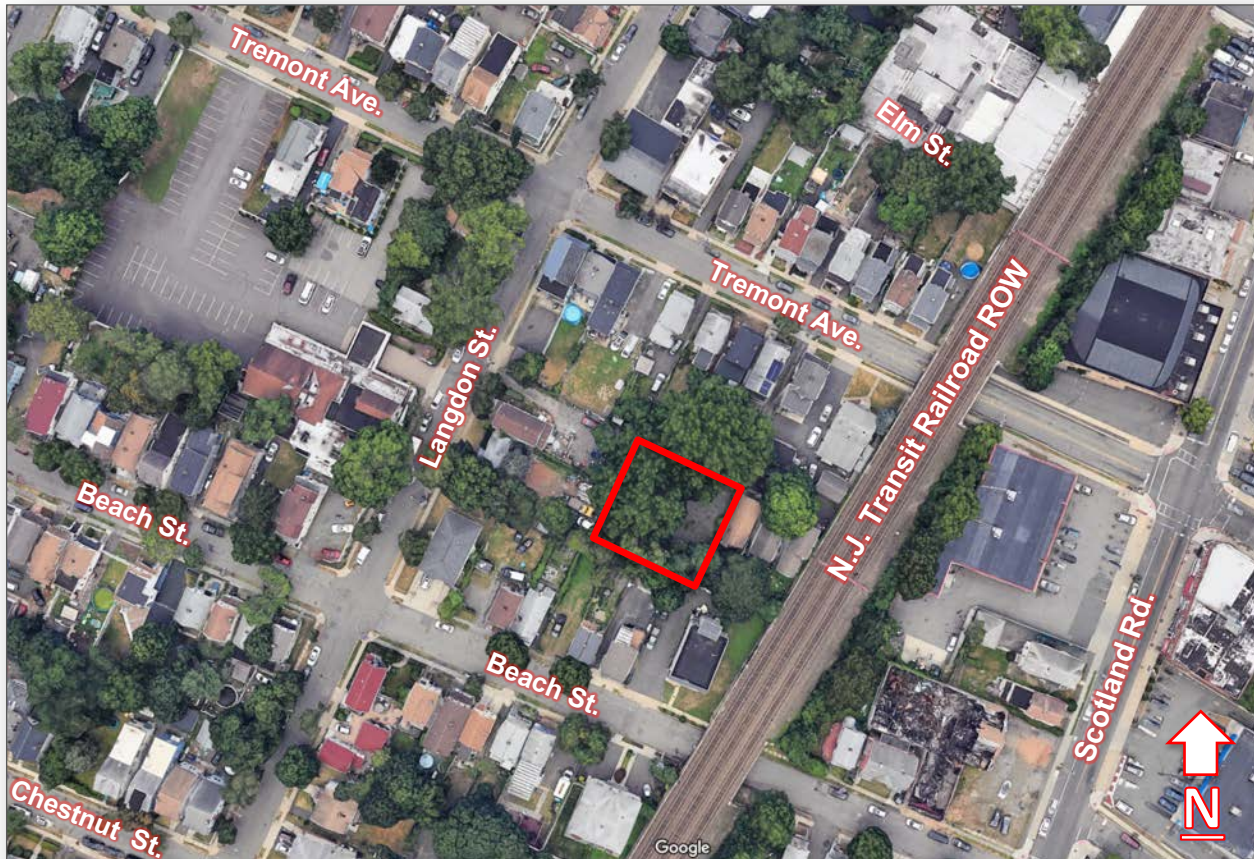


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## Site & Area Description

**Street Address:** 7-11 Berg Place (aka 7-11 Tremont Avenue)  
**Block & Lot:** Block 6106, Lots 19, 20 & 21  
**Zoning District:** MX-1 (Mixed Use Low Density Residential and Neighborhood Commercial)  
**Total Site Area:** 6,626-Square Feet

## Location Map



**Location Map** – The property in question is outlined in red on the Google aerial map above. The subject site is land locked at the center of the block bordered by Tremont Avenue, Langdon Street, Beach Street and the NJ Transit Railroad ROW. To the immediate east of the site are three (3) detached dwellings fronting on Berg Place. To the west are two (2) detached houses fronting on Langdon Street. To the south are four (4) properties fronting on Beach Street. To the north, across Berg Place from the site are detached dwellings fronting on Tremont Avenue.





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## Photo Survey



**Photo #1:** View looking south down Berg Place (outlined in red), which extends between two detached dwellings fronting on Tremont Avenue.



**Photo #2:** View looking down Berg Place towards the subject property. The Berg Place roadway is 10.3-feet in width.



**Photo #3:** View of the subject site. The applicant proposes to construct a 3-story seven-unit multifamily dwelling on the site.





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**Photo #4:** View looking west on Berg Place, in front of the subject site.



**Photo #5:** View of the three (3) detached dwellings located to the immediate east of the subject site, also fronting on Berge Place.



**Photo #6:** View looking north on the Berg Place roadway, back towards Tremont Avenue.



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## Planning Considerations

The subject property is located within the Township's **MX-1 (Mixed Use Low Density Residential and Neighborhood Commercial) Zone**. This zone is intended for neighborhood commercial uses while allowing low-density residential uses to occur on the ground floor and upper floors, thereby providing neighborhood convenience shopping opportunities while encouraging new residential development and residential rehabilitation.

Pursuant to the City of Orange Development Regulations **§210-14 – MX-1 (Mixed Use Low Density Residential and Neighborhood Commercial) Zone**, the proposed low-rise multifamily dwelling **is permitted** in the MX-1 zone.

The table below has been created to identify bulk deficiencies.

Standards	Permitted/ Required	Proposed	Variance Required
Use	Three-Family Dwellings, Townhouses, Low & Mid-Rise Multifamily Dwellings	Low-Rise Multifamily Dwelling	No
Minimum Lot Area	10,000-SF	<b>6,626-SF</b>	<b>Yes</b>
Minimum Lot Width	100-Feet	<b>72.59-Feet</b>	<b>Yes</b>
Density	50-Units/Acre	50-Units/Acre	No
Maximum Height	4-Stories / 50-Feet	3-Stories / 46-Feet	No / No
Minimum Front Yard Setback	10-Feet	27.6-Feet	No
Minimum Side Yard Setback (Each Side)	10-Feet	<b>West Side: 8.8-Feet</b> East Side: 10-Feet	<b>Yes</b> No
Minimum Rear Yard Setback	10-Feet	15.4-Feet	No
Maximum Building Coverage	70%	32%	No
Maximum Impervious Coverage	90%	85%	No





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<b>Floor Area Ratio (FAR)</b>	1.50	1.4	No
<b>Minimum Open Space</b>	10%	25.2%	No
<b>Minimum Fenestration</b>	20% <i>(of each frontage)</i>	Front: ? North: ? South: ? Rear: ?	
<b>Parking</b>	10-Spaces <i>[1.33-Spaces per du]</i>	<b>8-Spaces</b> <i>(7-physical spaces + 1-space EV-Charger bonus)</i>	<b>Yes</b>



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## Standards for Granting Variance Relief

### D – (Use) Variances

The MLUL (Municipal Land Use Law) at **N.J.S.A. §40:55D-70d** sets forth the standards for variances from the regulations pursuant to Article 8 of this act. A D-Variance is warranted to permit:

- 1) a use or principal structure in a district restricted against such use or principle structure,
- 2) the expansion of a nonconforming use,
- 3) deviation from a specification or standard pertaining solely to a conditional use,
- 4) an increase in the permitted floor area ratio,
- 5) an increase in the permitted density (*except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots either isolated undersized lot or lots resulting from minor subdivision*) or
- 6) a height of a principal structure which exceeds by 10 feet or 10%, the maximum height in the district for a principal structure.

A D-variance may be granted where the applicant shows to the satisfaction of the Board, that “*special reasons*” exist to warrant the granting of the variance. *Special reasons* may include that the use is inherently beneficial, that the property owner would suffer undue hardship if required to use the property in accordance with the permitted uses and standards for the zone, or that the site is particularly suited for the proposed use **and** thereby promotes the general welfare.

The applicant must **also** demonstrate that the requested relief will not result in any substantial detriment to the public good, nor substantial impairment to the zoning ordinance or zone plan. A variance under this subsection is granted only by **affirmative votes of at least five members**.

### C - (Bulk) Variances

The Municipal Land Use Law (MLUL) at **N.J.S.A. 40:55D-70c** sets forth the standards for variances from the bulk regulations of a zoning ordinance.

C(1) Variance - The Board must find that there is either undue hardship or practical hardship with the strict application of the zoning requirements as stipulated in the Zoning & Land Use Regulations, as a result of:

- a) exceptional narrowness, shallowness or shape of a specific property, or
- b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or
- c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

C(2) Variance – The Board must find that the proposed deviation from the Zoning & Land Use Regulations will advance the purposes of the MLUL and that the variance can be granted without substantial detriment to the public good, that the benefits of the deviation would substantially outweigh any detriment and that the variance will not substantially impair the intent an purpose of the zone plan and zoning ordinance. The benefits identified in granting a C(2) variance must include benefits to the community as a whole, not only the applicant of the property owner. Here too, the Board must be satisfied that the variance can be granted “*without substantial detriment to the public good*” and “*without substantial impairment to the intent and purpose of the zone plan and zoning ordinance*” of the City.



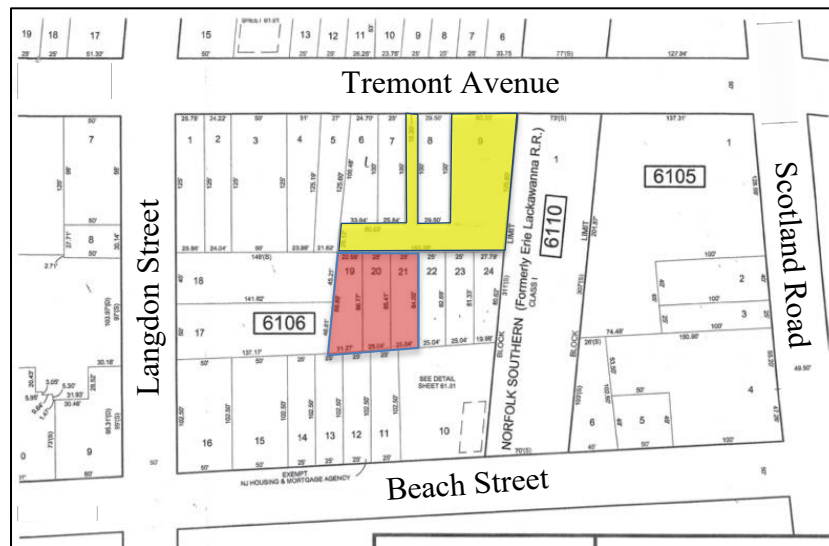
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## Planning Comments

The applicant proposes to construct a new 3-story seven-unit multifamily dwelling on an existing “landlocked” vacant lot. The proposed low-rise multifamily dwelling **is permitted** in the MX-1 zone. However, the proposed development, does not meet all the bulk and design standards for this use and building type.

As a permitted use in the MX-1 zone, this application is before this Board because the subject site is “landlocked” so that the proposed building will not front on a City street. Pursuant to Municipal Land Use Law **N.J.S. 40:55D-35**, “... no permit for the erection of any building or structure shall be issued unless the lot abuts a street giving access to such proposed building or structure. The provision goes on to state that, “... such street shall have been duly placed on the official map or shall be (1) an existing State, county or municipal street or highway, or (2) a street shown upon a plan approved by the planning board, or (3) a street on a plat duly filed in the office of the county recording officer prior to the passage of an ordinance under this act or any prior law which required prior approval of plats by the governing body or other authorized body.”

The subject site is located on Berg Place, which is not a City street, but rather private property. The survey submitted as part of this application indicates this. The applicant has also provided a copy of a recorded deed, which also substantiates that the thoroughfare referred to as Berg Place is in fact a part of tax lot 9, of block 6106. See illustration below.



The subject site is depicted in **red** and the “Berg Place” access property is depicted in **yellow** in the illustration above.





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In such a case, where the property in question does not front on a street, the applicant may appeal to the Zoning Board of Adjustment. Pursuant to Municipal Land Use Law **N.J.S. 40:55D-36** "... where the enforcement of N.J.S 40:55D-35 would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the building or structure to be related to a street, the board of adjustment may upon application or appeal, vary the application of N.J.S 40:55D-35 and direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety."

It should be noted here that Berg Place is also used to access three (3) lots located to the east of the subject site, which are also "landlocked." Each of these lots is improved with a detached dwelling, all of which must use the Berg Place roadway to access their properties.

**The applicant should provide testimony explaining what they know of this situation with the subject site not fronting on a street and how it came to be. The applicant should further provide testimony disclosing any easement or agreement that provides permission for continued use of the roadway.**

The Berg Place access road off of Tremont Avenue is located between two detached dwellings fronting on Tremont Avenue. This access road has a width of 10.3-feet abutting the building facades on either side. With the seven (7) dwelling units proposed in the new building in addition to the existing houses located there, the volume of vehicles that will traverse Berg Place **will likely more than double.**

Related to the vehicular access, in their review of the proposed development, the City of Orange Township Fire Department expressed concern about their apparatus accessing the site, in the event of an emergency. The Fire Official provided a list of requirements that would need to be satisfied for their access. **The applicant should provide testimony addressing these requirements and whether the subject site will meet them.**

In addition to the variance permitting the siting of the proposed low-rise multifamily dwelling on the subject site, the applicant will require variances for the following conditions.

- **Insufficient Lot Area and Width** – Whereas a minimum lot area of 10,000-SF and lot width of 100-feet is required for a low-rise multifamily dwelling, the applicant proposes a lot area of 6,626-SF and lot width of 72.59-feet. **While these conditions might be relatively inconsequential in a traditional setting, in this situation with the subject site not fronting on a City street, raises concern over the intensity of the use**



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proposed for the site. In particular, the ability for emergency vehicles to access the site.

- Insufficient Side Yard Setback – Whereas a minimum side yard setback of 10-feet is required, the applicant proposes a side yard setback of 8.8-feet on the western side. **The west side of the subject site abuts the rear yards of two properties fronting on Langdon Street. As such the building on those properties will be some distance away from the proposed low-rise building on the subject site. There does, however, appear to be garage structures at the rear of these properties, which will be in closer proximity to the proposed new building.**

It should also be noted here that the proposed development **does not** meet the minimum required off-street parking requirement. Whereas a minimum of ten (10) spaces is required, the applicant proposes the equivalent eight (8) spaces. **The applicant should address this parking deficiency.**

### **Recommended Conditions of Approval**

Should the Board be inclined to grant the requested variance relief in full or in part, or to approve the accompanying site plan, the following are recommended conditions that should be placed on the approvals.

1. The applicant shall provide testimony explaining what they know of this situation with the subject site not fronting on a street and how it came to be. The applicant shall further provide testimony disclosing any easement or agreement that provides permission for continued use of the roadway.
2. The applicant shall provide testimony addressing the requirements for accessing the site provided by the Orange Fire Department and indicate whether the subject site will meet them or not.
3. The applicant shall provide the fenestration level for each of the building's façades and ensure that they comply with the required standard of at least 20% on each frontage.
4. The applicant shall provide testimony addressing the deficiency of two (2) parking spaces from the minimum number of parking spaces required.