

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: November 4, 2014
Memorialized: November 4, 2014

Re: Application No. 2014-46-PFSPV- #1
Applicant: Health Resources of New Jersey, LLC
Premises Block: 7300, Lots 4.03 and 5
Zone: HH - Hospital Healthcare Zone

APPLICATION FOR MINOR SUBDIVISION APPROVAL AND BULK VARIANCE

SUMMARY OF THE CASE

1. Applicant is the contract purchaser of Block 7300, Lot 4.03. Lot 5 is owned by Saint Barnabas Medical Center ("SBMC"). SBMC consented to the Application. Both lots are located in the HH Hospital Services District.
2. Applicant requests minor subdivision approval to subdivide a portion of existing Lot 5 Block 7300 and to annex that portion to Lot 4.03 of Block 7300 to create new Lot 5.01 which requires a variance as to total lot size. New Lot 5.01 would measure 2.2792 acres, whereas 5 acres is the minimum size permitted in the HH Zone. The Applicant requests a variance of 2.7208 acres for Lot 5.01, Block 7300.
3. The subdivision would reduce the size of Lot 5 to 4.4867 acres, whereas Township Code 170-118.2D requires a minimum lot size of 5 acres so that Applicant requests a variance of 0.5133 acres for Lot 5, Block 7300.
4. This Application was heard before the Livingston Planning Board ("Board") at public hearings held on August 5, 2014, September 16, 2014 and October 7, 2014, at which the Board also considered the following applications also filed by Applicant:
 - a. Application No. 2014-46-PFSPV-2 - Application for preliminary and final site plan approval and bulk variances for an Assisted Living Facility proposed for Block 7300, Lot 4.02;
 - b. Application No. 2014-46-PFSPV-3 - Application for preliminary and final site plan approval and bulk variances for a Post Acute Rehabilitation Facility proposed for Block 7300, Lot 5.01;

- c. Application No. 2014-46-PFSPV-4 - Application for preliminary and final site plan approval and bulk variances to construct a parking lot on Block 7300, Lot 4.01; and
 - d. Application No. 2014-46-PFSPV-5 - Application for preliminary and final site plan approval and bulk variances to reconfigure existing parking located on Block 7300, Lot 5 following his minor subdivision.
5. Applicant filed this Application and each of the other four above-referenced applications separately and separate filing fees were computed for each; however, because all five applications involved a single Applicant and adjacent property, all five applications were presented as one comprehensive overall Plan as requested by the Township's Technical Review Committee (TRAC) and were considered simultaneously at the same public hearing.
 6. The Township Engineer, Richard Calbi, the Township Assistant Engineer, Jeannette Harduby, and the Township Planner, Veena Sawant, prepared a comprehensive detailed report with regard to all five applications, dated April 8, 2014 and revised through September 15, 2014 ("Professional Report"). It is attached to and incorporated in this Resolution, it will be referred to by page. The property has an extensive history which is well documented on pages 4 and 5 in the Professional Report.
 7. The Applicant was represented by Barry H. Evenchick, of Walder Hayden, P.A. law firm who presented proof that all jurisdictional requirements including service and publication of notice have been met and that all taxes owed on the site have been paid.
 8. Testifying on behalf of the Applicant were J. Michael Petry, who was accepted by the Board as an expert in the fields of engineering and planning; Roland Borglund, who was accepted by the Board as an expert in the field of architecture; and Gordon Meth, who was accepted by the Board as an expert in traffic engineering.
 9. In addition, the Board retained Brian Conway, a licensed landscape architect, who presented testimony concerning Applicant's proposed landscaping. His testimony, however, was not directly relevant to the Application for a minor subdivision.
 10. On October 7, 2014, William Munday of the law firm McCusker, Anselmi, Rosen and Carvelli, appeared on behalf of Inglemoor Care Center L.P. (a potential business competitor of Applicant) in objection. Mr. Munday presented John Chadwick who was accepted by the Board as a planning consultant and who testified in opposition to some aspects of some of the requested variances.
 11. Lawrence Neher, Esq. appeared on behalf of Temple B'Nai Abraham who indicated that the Temple had met with the Applicant and had entered into a written agreement with it with regard to certain aspects of this Application and the other four applications, which impact the Temple properties. He asked the Board to impose a condition upon all five applications to require that a Certificate of Occupancy not be issued until the Temple had supplied an Estoppel Certificate indicating that the terms the written agreement between the Applicant and the Temple had been met.

12. Three residents from nearby homes appeared either in opposition to aspects of the individual filed applications, or to aspects of them, or to clarify questions with regard to some aspects of the five applications. They were Bunnie Ratner, Jeralyn Kobrick and Robert Rashkes. None of their comments directly pertained to the Application for minor subdivision, but rather focused on site plan aspects of the other applications presented concurrently.
13. The Board did not receive notice of the terms of the agreements with Temple B’Nai Abraham and Ratner, nor did the Board indicate it would be responsible for enforcement of those agreements. For the record it was also noted that Bunny Ratner is the wife of Board Member Samuel Ratner, who recused himself from this matter.
14. Subsequent to the conclusion of the hearings, the Applicant made a request for individual bifurcated Resolutions for each of the five separate Applications.

FINDINGS OF FACT

1. Applicant requests a minor subdivision to shift the existing lot line between Lots 4.03 and 5, making Lot 4.03 larger and Lot 5 smaller. The proposed larger merged lot (previously Lot 4.03) would then be renumbered as Lot 5.01.
2. In the HH District, lots are required to measure a minimum of 5 acres.
3. Lot 4.03 measures 0.8673 acres. After the proposed subdivision of Lot 5, the subdivided portion would be merged into existing Lot 4.03 creating the new Lot 5.01, which would measure 2.2792 acres.
4. Thus, as Mr. Petry testified, this Application will improve an existing nonconforming lot, Lot 4.03 by making it larger.
5. Existing Lot 5 measures 5.8986 acres. After the proposed minor subdivision, it would measure 4.4867 acres.
6. Accordingly, Applicant requires a variance from Township Code §170-118.2D, which requires a minimum lot area of 5 acres in the HH Zone, where Applicant proposes 2.2792 acres for Lot 5.01 and 4.4867 for Lot 5.
7. Lot 4.03 (to become Lot 5.01) and Lot 5 are adjacent to Lot 4.01; however, Lot 4.01 cannot be subdivided to add to either Lot 4.03 or Lot 5.01 because Lot 4.01 is located in the R-5D Zone, and thus, involving Lot 4.01 in the subdivision would result in split-zoned lots. As Mr. Petry confirmed in his testimony, from a planning perspective, it is better to reallocate two lots within the HH Zone than to create lots split between the HH Zone and the R-5D Zone, split lots not being favored in the Township Code.
8. Proposed Lot 5 (after the minor subdivision) would be marginally less than the 5-acre minimum requirement, but the addition of more than 1.4 acres to existing Lot 4.03 would

create the new Lot 5.01 and allow its productive use. Said use would be inheritantly beneficial as it directly serves the adjoining St. Barnabas Medical Center facility.

9. As Mr. Petry testified, and as several Board members commented, Lot 5 and Lot 4.03 are both part of the HH Zone, are anticipated to be developed with the hospital-related uses permitted in the HH Zone and as part of the larger hospital campus zoning plan. Thus, individual lots lines within the hospital campus are not likely to be perceptible once development occurs, particularly because the southern lot line of Lot 5.01 will be across a paved parking field, and will not be visible.
10. Mr. Petry also testified that granting the variance would not cause any substantial detriment to the public good or substantially impair the zoning plan or ordinance and would in fact improve the HH Zoning Plan.
11. Mr. Chadwick provided testimony that was contrary to Mr. Petry's testimony. However, Mr. Chadwick's testimony was cursory, unsupported by analysis or facts, and was admittedly not based on a thorough review of the plans. By contrast, Mr. Petry provided significant, factually based testimony over the course of all three hearings. The Board finds Mr. Petry's testimony to be more credible. The Board finds Mr. Chadwick's testimony to be a net opinion and does not find his testimony to be persuasive. The Board further notes that the objector presenting Mr. Chadwick did not offer any supportive evidence and that the greater breadth of the evidence presented by the Applicant provided greater credibility.

CONCLUSIONS

1. The Board grants the request made by the Applicant for separate Resolutions on each of the five individual Applications which were consolidated for hearing.
2. This Application meets the requirements for minor subdivision approval. It involves fewer than 5 lots and does not involve a planned development, any new street, or the extension of any off-tract improvements.
3. Applicant requires a variance from Township Code §170-118.2D, which requires a minimum lot area of 5 acres, where Applicant proposes 2.2792 acres for Lot 5.01 and 4.4867 acres for Lot 5.
4. The uses permitted in the HH Zone, which are all hospital-related uses, are inherently beneficial. Thus, the variances requested in connection with this subdivision to facilitate development in the HH Zone satisfy the positive criteria set forth in N.J.S.A. 40:55D-70(c)(2).
5. The Board further finds that the Application would still meet the positive criteria set forth in N.J.S.A. 40:55D-70(c)(2). Among other purposes, the Board concludes that the subdivision within the HH Zone for the purpose of developing additional medical facilities promotes the public health and contributes to the well-being of persons. The

benefits of this Application include, but are not limited to, significantly increasing the size of Lot 4.03, and thus improving a nonconforming condition. Any detriment associated with reducing the size of Lot 5 is far outweighed by allowing Lot 4.03 (proposed Lot 5.01) to be increased to a size that will allow it to be developed with a use permitted in the HH Zone.

6. The Application also satisfies the negative criteria set forth in N.J.S.A. 40:55D-70(c), such that relief can be granted without substantial detriment to the public good and without substantial impairment to the zone plan. Increasing the size of Lot 4.03 facilitates the development of the hospital campus, which is a goal of the Master Plan. The subdivision also results in two lots that remain wholly within the HH Zone, rather than creating split zoned lots, which would impair the zone plan. The Board cannot find any detriment to the public good.
7. The Board grants a variance from Township Code Section 170-118.D and pursuant to N.J.S.A. 40:55D-70(c)(2) as follows:
 - A: The Board approves a variance of 0.5133 acres for Lot 5 which after the subdivision shall measure a total of 4.4867 acres.
 - B: The Board approves a variance of 2.7208 acres for new Lot 5.01 which will measure 2.2792 acres.

This approval is subject to the following conditions agreed to by the Applicant on the record:

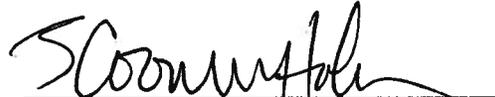
- A. Written responses to the final memoranda of the Township Engineer and Planner shall be provided.
- B. The Subdivision Plot shall be revised to show all changes agreed to on the hearing record.
- C. No CO will be issued in conjunction with this site until the written agreement between the applicant and Temple B’Nai Abraham has been met by means of the Temple providing an Estoppel Certificate.
- D. The Board’s Model Conditions of Approval annexed hereto are incorporated herein.
- E. The conditions in (A) and (B) above and Model Conditions Nos. 6, 8, 11, 14, 17 and 18 shall be complied with prior to the issuance of any permits.

NOW, THEREFORE, for the reasons set forth herein and as stated on the Record by the Members of the Planning Board of the Township of Livingston, it is resolved that Minor Subdivision approval for the Application, with variances, be and is hereby granted and approved, subject to the terms and conditions as set forth herein.



Stephen A. Santola, Acting Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on November 4, 2014 wherein Board Members, Santola, Kimmel, Leopold, Wishnew (for absent Member Klein) and Alvarez (for absent Member Dinar) voted in favor of the Application.


Jackie Coombs-Hollis, Secretary