

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

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

Re: Application No. 2014-46-PFSPV- #2
Applicant: Health Resources of New Jersey, LLC
Premises Block: 7300, Lot 4.02
Zone: R-5D Residential Zone

**APPLICATION FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL AND
BULK VARIANCE (ASSISTED LIVING FACILITY)**

SUMMARY OF THE CASE

1. Applicant is the owner of Block 7300, Lot 4.02.
2. Applicant requests preliminary and final site plan approval and a bulk variance to construct an assisted living facility on Lot 4.02. Such a use is permitted in the R-5D Zone.
3. 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-1 - Application for minor subdivision and a bulk variance related to Lot 5 and Lot 4.03 (proposed Lot 5.01);
 - 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 the minor subdivision.

4. 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 Technical Review Committee (TRAC) and were considered simultaneously at the same public hearings.
5. 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.
6. 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.
7. 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.
8. In addition, the Board retained Brian Conway, a licensed landscape architect, who presented testimony concerning Applicant's proposed landscaping and the Board retained the following additional professionals who prepared reports in connection with these applications: Maser Consulting (Traffic - 8/20/14); Hatch Mott MacDonald (Sanitary Sewer & Water - 9/15/14); Maser Consulting (Drainage - 9/12/14).
9. 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.
10. 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.
11. 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

12. Robert Rashkes. On October 7, 2014, Applicant notified the Board that Applicant had entered into a written agreement with Mrs. Ratner to address her site plan concerns.
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 preliminary and final site plan approval and variances to construct a three-story, 124-unit assisted living facility with sub-grade parking garage with 98 spaces, including 4 barrier free spaces. An additional 29 surface parking spaces are proposed, with an additional 4 barrier free spaces, bringing the total proposed parking spaces for Lot 4.02 to 127.
2. Applicant proposes to clear existing trees and bush areas, construct two gazebos, and plant a variety of deciduous and evergreen trees within the interior of the site and the parking area. The existing landscaped buffer berm will remain.
3. The project will be accessed from two, 24-foot wide ingress and egress driveways along East Cedar Street. Applicant will also construct a 12-foot wide grass paver emergency vehicle access lane along the rear side of the building.
4. As Mr. Borglund testified, the proposed building will be constructed with high quality brick, stucco, stone, and glass.
5. A prior applicant previously obtained site plan approval to construct age-restricted apartments on the same property. As Mr. Petry testified, the assisted living facility will have a smaller footprint than the previously approved apartments. The new application also proposes LED lighting fixtures, which are more efficient and have less impact on surrounding uses than the previously approved metal haloid fixtures. Mr. Meth also testified that that proposed assisted living facility will have a lesser traffic impact than the previously approved apartments.
6. Mr. Petry testified that constructing the previously approved apartment building would require rock blasting to occur for a 6-month period. Instead of 6 months of rock blasting, Mr. Petry testified that the currently proposed development would require approximately 30 days of rock removal, much of which could be accomplished without blasting

7. In addition to preliminary and final site plan approval, Applicant requires a variance from Township Code §170-103F(3), which allows a maximum building height of “no more than three stories at the front of the building façade and a maximum of 498 feet above mean sea level measured at the highest point of the roof.” Applicant proposes a three-story building, which complies with the first part of § 170-103F(3); however, Applicant requires a variance from the second part of §170-103F(3), as the building will sit at 500.5 feet above mean sea level, and, thus, exceeds the maximum permitted elevation by approximately 2.5 feet.
8. Applicant also agreed to further supplement the proposed landscaping and to comply with the comments presented in a letter dated September 30, 2014 from Mr. Conway.
9. 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. Specifically, he testified that the building complies with the three-story limitation and that the additional 2.5 feet above the mean sea level will not be perceptible to the human eye and thus, will not have a detrimental impact on the surrounding properties or the public at large.
10. Mr. Chadwick did not provide any specific testimony regarding the height. Any he did provide 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 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.

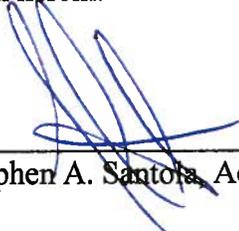
CONCLUSIONS

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 preliminary and final site plan approval.
3. The Board grants of variance of 2.5 feet from Township Code §170-103F(3), for proposing a building at 500.5 feet above the mean sea level when a maximum of 498 feet is permitted.
4. As this assisted living facility is associated with the hospital, it is an inherently beneficial uses. Thus, the variance requested in connection with this Application satisfies the positive criteria set forth in N.J.S.A. 40:55D-70(c)(2).
5. The Application also meets the positive criteria set forth in N.J.S.A. 40:55D-70(c)(2). Among other purposes, the Board concludes that the Application for an assisted living facility promotes the public health and contributes to the well-being of persons. The

benefits of this Application include, but are not limited to, (i) reducing the overall traffic impact from the previously approved apartment building; (ii) providing a comprehensively designed medical facility that compliments the hospital campus; and (iii) reducing the amount of rock blasting necessary to develop the property. Any detriment from the 2.5-foot deviation in height (which constitutes an approximately 0.5% deviation) is far outweighed by the benefits of this approval.

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. Specifically, the building complies with the 3-story limitation and the 2.5-foot deviation would not be perceptible.
7. Pursuant to N.J.S.A. 40:55D-70(c)(2), the Board grants and approves a variance of 2.5 feet from Township Code 170-103F(3) as to the elevation of the building height which shall be 500.5 feet above sea level.
8. 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 Site Plans shall be revised to: (1) show all changes agreed to on the hearing record; (2) identify in generalized terms how work will be phased so as to preserve safety and functionality of the site during construction; and (3) make minor adjustments to parking in response to points raised by the Township Engineer, provided that the total number of parking spaces on and off site continue to be in excess of the requirements of the Township Code.
 - 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 provided 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 Preliminary and Final Site Plan 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. Santofa, 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