

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

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

Re: Application No. 2014-46-PFSPV- #4
Applicant: Health Resources of New Jersey, LLC
Premises Block: 7300, Lot 4.01
Zone: R-5D Residential Zone

**APPLICATION FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL AND
BULK VARIANCES FOR PARKING LOTS B AND C**

SUMMARY OF THE CASE

1. Applicant is the owner of Block 7300, Lot 4.01, which is in the R-5D Residential Zone.
2. Applicant requests preliminary and final site plan approval and bulk variances to construct a surface parking lot to be used in connection with Saint Barnabas Hospital. Such a use is permitted in the R-5D Residential 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-2 - Application for preliminary and final site plan approval and bulk variances for an Assisted Living Facility proposed for Block 7300, Lot 4.02;
 - c. 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; and
 - d. Application No. 2014-46-PFSPV-5 - Application for preliminary and final site plan approval and bulk variances to reconfigure existing parking lot 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. In 2006, a prior applicant obtained preliminary and final site plan approval and bulk variances to construct an office building on Lot 4.01. That approval remains in effect, but has not been constructed. Mr. Petry testified that constructing the office building would require rock blasting to occur for a 6-month period.
2. This Application, if approved, would permit Applicant, in lieu of the office building, to construct a bituminous concrete paved parking area with approximately 433 parking spaces on Lot 4.01. During the course of the hearing the Applicant agreed to add additional landscaping in the parking lot area which would result in a loss of no more than six parking spaces, the actual number of which will be provided to the Township Engineer.
3. The parking lots will be used exclusively in connection with Saint Barnabas Medical Center for employee parking. The hospital will provide shuttle service from the parking lots to the main hospital building.
4. The proposed parking area will have access from East Cedar Street via a 24-foot-wide combined access driveway located along the northern property line. The parking lot will connect to an existing parking area used by Saint Barnabas Medical Center, thus expanding parking to be used to service the hospital.
5. As part of the construction of the parking area, three retaining walls will be constructed, brush and exposed rock will be removed, new deciduous and evergreen trees will be planted, and 18-foot pole-mounted lights will be installed.
6. 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 variances pursuant to N.J.S.A. 40:55D-70(c) from the following provisions of the Township Code:

- a. §170-103G(6)(c)[3], which requires a parking setback of 20' feet for professional building development, whereas 0' feet is proposed along the property line with Lot 5; and¹
 - b. §170-3A, which requires parking spaces are required to have a depth of 20', where 18' is proposed.
8. The parking lots proposed for Lot 4.01 would be physically connected to the existing parking lots on Lot 5, which are also used for hospital purposes.
9. Mr. Petry testified that the proposed parking spaces on Lot 4.01 would measure 18-feet deep, which is the same size as currently used on Lot 5, thus providing consistency between the adjoining parking lots.
10. As a practical matter, the parking lots on Lot 4.01 and Lot 5 will operate as cohesive parking lots as part of a comprehensively planned hospital campus, with some of the parking spaces straddling the lot lines between the two properties. The two properties cannot be merged, however, as Lot 4.01 is in the R-5D District and Lot 5 is in the HH District. The Applicant will provide any necessary easements or deed restrictions as may be required by the Board attorney.
11. In response to comments received in the Professional Report, Applicant resubmitted plans to further improve the proposed stormwater facilities and landscaping on Lot 4.01. The approved plans thus comply with all requirements for landscaping and street trees.
12. Applicant also agreed to further supplement the proposed landscaping and to comply with the comments presented in a letter dated September 30, 2014 from Brian Conway, the landscaping expert retained by the Board. No variance from §170-94 A(8) is necessary because Applicant agreed to comply with his request with which the Board agreed.
13. 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 parking lots would largely be used for hospital employees (and not necessarily the public in most instances), the proposed stall sizes are consistent with existing parking spaces on Lot 5, and the lot line would not be perceptible to the average person, as the parking lots were being designed as part of a comprehensive hospital campus.
14. Mr. Chadwick provided testimony that was contrary to Mr. Petry's testimony. However, Mr. Chadwick's testimony was cursory, unsupported by analysis of facts, and was admittedly not based on a thorough review of the plans. By contract, Mr. Petry provided

¹ There are no specific requirements in the R-5D Zone concerning the required parking setback from property lines for surface parking lots servicing hospitals. It was suggested by the Board's planner that the standards set forth in §170-103G(6)(c)[3] could arguably be interpreted to apply. In the alternative, the planner suggested that the requirements for hospital parking in the HH Zone could apply. The HH Zone requires a 15' setback for parking. (See §170-118.2D(5)(f)). For the reasons expressed in this Resolution, the Board finds that 0' feet is the appropriate parking setback for this particular property, and therefore, grants the requested variance without necessarily determining whether the required setback is 20' or 15'.

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. Applicant requires variances from (i) Township Code §170-103G(6)(c)[3], which requires a parking setback of 20' feet for professional building development, whereas 0' feet is proposed along the property line with Lot 5; and (ii) §170-3A, which requires parking spaces to have a depth of 20', where 18' is proposed.
4. The proposed use is permitted in the R-5D Zone, in support of the hospital functions. A hospital is an inherently beneficial use, as are the parking lots required for the hospital. Thus, the variances requested in connection with this Application 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 Application for the purpose of supporting existing and 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, (i) increasing parking available to the hospital and alleviating congestion; (ii) constructing a use that requires far less rock blasting than the previously approved plan; and (iii) creating consistent parking space sizes between the adjoining lots. Because Lot 4.01 and Lot 5 will function as integrated parking lots, there are no detriments associated with having not a parking setback between those lots. Thus, the benefits of the Application far outweigh the detriments.
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. Creating a comprehensively planned hospital campus, including adjoining parking lots, promotes the goals of the Master Plan. Like Mr. Petry, the Board cannot find any detriment to the public good.
7. The Board grants the variances pursuant to N.J.S.A. 40:55D-70(c)(2) as follows:

A: A variance from Township Code §170-103G(6)(c)[3] of 20 feet is granted to allow a zero foot parking setback, and;

B: A variance from the Township Code §170-3A of 2 feet to allow parking spaces with a depth of 18 feet.

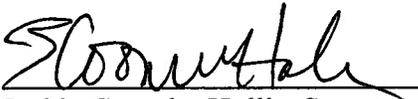
8. This approval is subject to the following conditions agreed to by the Applicant on the record:
- A. Written responses to the final memoranda of the Township Engineer and Planner shall be provided.
 - B. The Site Plans shall be revised to: (1) show all changes agreed to on the hearing record; (2) identify 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 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 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. 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