

**RESOLUTION**  
**PLANNING BOARD**  
**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

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

Re: Application No. 2014-46-PFSPV- #3  
Applicant: Health Resources of New Jersey, LLC  
Premises Block: 7300, Lot 5.01 (Previously Lot 4.03)  
Zone: HH Hospital Healthcare Zone

**APPLICATION FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL AND  
BULK VARIANCES FOR POST ACUTE REHABILITATION CENTER**

**SUMMARY OF THE CASE**

1. Applicant is the contract purchaser of Block 7300, Lot 4.03, and a portion of Lot 5, which pursuant to Application No. 2014-46-PFSPV-1, will become Block 7300, Lot 5.01. Lot 5.01 is located in the HH Zone.
2. Applicant requests preliminary and final site plan approval and bulk variances to construct a Post Acute Rehabilitation Center on Lot 5.01. Such a use is permitted in the HH 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-4 - Application for preliminary and final site plan approval and bulk variance for 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 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 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.
12. 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.
13. 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 eliminate the office building on Lot 4.01 in favor of constructing a Post Acute Rehabilitation Center on the newly created Lot 5.01.
3. Lot 5.01 currently has 124 parking spaces that are used by employees of Saint Barnabas Medical Center.
4. Applicant proposes to construct a Post Acute Rehabilitation Center with parking on two levels below ground. The lower garage includes approximately 87 parking spaces (for use by Saint Barnabas Medical Center), with an additional 88 spaces in the upper garage (for use by staff of the Post Acute Rehabilitation Center). Applicant also proposes 37 surface parking spaces, including 3 barrier free spaces along East Cedar Street. Surface parking spaces would be primarily available for visitors and short-term staff parking for emergency situations.
5. The project will be accessed via two proposed 24-foot-wide ingress and egress driveways along East Cedar Street, one of which is located at the signalized intersection of East Cedar Street and Old Short Hills Road.
6. In addition to the building, Applicant’s proposed site work also includes removing the existing pavement, curbing, fencing, guiderail, lighting, and concrete pad and clearing trees and brush.
7. Mr. Petry testified that the currently proposed development would require approximately 30 days of rock removal, much of which could be accomplished without blasting.

8. 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. §170-118.2D(5)(c) to permit a building setback of 2.34', where 25' is required; and
  - b. §170-118.2D(5)(d) to permit a parking setback of 7.69' to Lot 5, where 15' is required.
9. Currently, the existing parking are violates Township Code §170-94B(11), as it has an 18' drive aisle, where a 20' drive aisle is required for two-way traffic. This nonconforming condition will be eliminated.
10. Mr. Petry testified that although the Application requires building and parking setback variances, the adjacent lots are part of a comprehensively designed medical campus. In addition, Lot 5.01 will have cross access with the adjacent property.
11. In addition, in response to comments received in the Professional Report, Applicant resubmitted plans to further improve the proposed stormwater facilities and landscaping on Lot 5.01. The approved plans thus comply with all requirements for landscaping and shade 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 Mr. Conway.
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 there will be no visual delineation of the property lines and no detrimental impact on the surrounding property to which the setbacks do not conform.
14. Mr. Chadwick did not provide any specific testimony regarding these variances. Any he did provide was contrary to Mr. Petry's testimony. While the testimony of Chadwick was contrary to that of Mr. Petry, the Board finds that the testimony by Chadwick was not persuasive and that the testimony of Mr. Petry was more credible. Mr. Petry provided significant fact based testimony over the course of three hearings which the Board finds to be credible. 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.

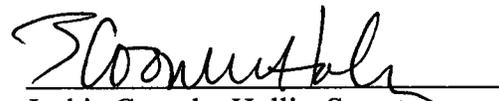
3. Applicant requires variances from (i) §170-118.2D(5)(c) to permit a building setback of 2.34', where 25' is required; and (ii) §170-118.2D(5)(d) to permit a parking setback of 7.69' to Lot 5, where 15' is required.
4. The proposed use is permitted in the HH Zone, as a compliment to the hospital functions. Thus, the Post Acute Rehabilitation Center is an inherently beneficial use, and 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 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) replacing the previously approved office building to a use that will have less impact; and (ii) constructing a use that requires far less, if any, rock blasting than the previously approved plan. Because Lot 5.01 will be functionally integrated into the surrounding hospital campus, there are no detriments associated with not having conforming interior building and parking setbacks. 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 by promoting public health and safety which services the public good.
7. The Board grants the requested variances pursuant to N.J.S.A. 40:55D-70(c)(2) as follows:
  - A: The Board grants a variance of 22.66 feet from the building setback requirements of Township Code §170-118.2D(5)(c) and;
  - B: The Board grants a parking setback variance of 7.31 feet for Lot 5 from the requirements of Township Code §170-118.D(5)(d).
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.

  
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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.

  
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Jackie Coombs-Hollis, Secretary