

RESOLUTION
TOWNSHIP OF WASHINGTON
ZONING BOARD OF ADJUSTMENT

WHEREAS, Habitat for Humanity of Bergen County (the “Applicant” or “Habitat”) has applied to the Zoning Board of Adjustment of the Township of Washington for site plan and subdivision approval and variance relief from the zoning code to subdivide the property known as 639 Jefferson Avenue and designated as Lot 25, Block 3103 on the Tax and Assessment Map of the Township of Washington, Bergen County, New Jersey (the “Property”) and thereafter construct four (4) unit single family townhome projects for veterans and senior housing (the “Project”); and

WHEREAS, the Applicant has filed its application for development of the Property and seeks the following land use approvals: (a) “d-1” Use Variance to permit the proposed construction of a non-conforming principal structure (i.e. attached townhouse building); (b) “d-5” variance for density of approximately 14 dwelling units per acre; (c) preliminary & final major subdivision with associated variance relief as required in connection therewith for the creation of 4 (four), “fee-simple” lots and preliminary and final major site plan with associated variance relief; (d) *de minimis* exceptions from the RSIS requirements with respect to sidewalks and number of parking spaces;

WHEREAS, on July 19, 2016 and August 16, 2016 public hearings were held at which time testimony and arguments were given on behalf of the Applicant; and

WHEREAS, the Applicant was represented by Bruce Rosenberg, Esq., and offered the testimony of Jacey Raimondo, its Executive Director, Julie Orlando, its Chairperson of Family Selection Piero F. Gabucci, A.I.A., a licensed architect, William Hamilton, P.P., A.I.C.P, professional planner, and Joseph Vince, P.E, professional engineer; and

WHEREAS, in addition to the documents submitted with its Application, the Applicant relied upon and entered into the evidence the following exhibits all of which are included herein by reference:

- i. A-1 – Set of revised subdivision and site plans, last revised August 4, 2016
- ii. A-2 – Color Aerial
- iii. A-3 – Color Rendering dated July 19, 2016

- iv. A-4 – Floor Plan, dated August 16, 2016
- v. A-5 – Colorized Landscape Plan, dated August 4, 2016

WHEREAS, on August 16, 2016, the Board after due consideration and deliberation granted site plan and subdivision approval and with variance relief; and

WHEREAS, all Board members who were present voted to approve the Application; and

WHEREAS, pursuant to N.J.S.A. 40:55D-10(g), said decision must be reduced to writing and include findings of fact and conclusions of law based thereon; and

WHEREAS, on September 20, 2016, the Board of Adjustment in an open and public session, does hereby adopt, ratify and confirm the following as its findings of fact and conclusions of law based upon the Applicants submissions, testimony and express representations:

1. The Applicant is in the business of providing affordable housing within Bergen County. Among other things, it identifies and acquires properties and thereafter develops them with affordable housing units. The housing units are constructed with the assistance of volunteers, prospective occupants known as “Habitat Families” that will occupy the units and licensed professionals. The Applicant also provides interest-free home loans to its Habitat Families when necessary.

2. The Property is currently owned by the Township of Washington and was formerly owned and occupied by the Township of Washington memorial Post No. 6192, Veterans of Foreign Wars of the United States, Inc.

3. The Property is located within the “Class B’ Residential Zoning District.

4. The Property is currently developed, *inter alia*, with a vacant 2-story frame building and 1-story masonry building that formerly served as a meeting Hall for the Veterans of Foreign Wars post 6192.

5. The Applicant identified the Property as a suitable location following its research that VFW buildings were being closed throughout Bergen County.

6. The Applicant is the contract purchaser of the Property pursuant to the Amended and Restated Purchase and Sale Agreement between the Applicant and the Township of Washington (the “Township”) dated March 11, 2016 (the “AARPASA”).

7. As set forth in the AARPASA the Township is transferring the Property to the Applicant for the purpose of partially satisfying the Township's obligations to provide affordable housing in accordance with the New Jersey Supreme Court's decision in *In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing*, 221 N.J. 1 (2015) (the "Supreme Court COAH Case"), and in connection with the declaratory judgment action filed by the Township in the Superior Court of New Jersey entitled *In The Matter Of The Application Of The Township Of Washington*, Docket No. BER-L-6067-15 (the "Washington Township Case").

8. In addition to the need for affordable housing generally, the Applicant testified that it had identified a need for veterans housing within Bergen County.

9. As depicted on the submitted Preliminary & Final Major Subdivision/Site Plan drawings, Applicant seeks a Preliminary and Final Major Subdivision approval in accordance with requirements of Township Code Section 239-5 et seq., to subdivide lands identified on the current Tax Assessment Map as Block 3103 – Lot 25, into four (4) new lots, with each lot containing street frontage along Jefferson Avenue.

10. The existing buildings and all other existing site features shall be demolished and removed from the site so as to properly prepare the site for its proposed redevelopment to include a four new attached townhouse units situated on each of the four fee-simple lots created pursuant to the Major Subdivision application.

11. The proposed Lots 25.01 and 25.04 are to be of rectangular configuration with 36.50 feet of frontage along the Jefferson Avenue right-of-way and a depth of 100.00 feet. Each lot shall have an area of 3,650 square feet (0.084 acres) and shall contain the westerly and easterly ends units (respectively) of the proposed attached townhouse building. Each of the dwelling units shall be 1-story in height and shall have a gross floor area of approximately 1,180 square feet. Proposed amenities shall include a covered porch at the side entry to the dwelling, a one-car garage, paved driveway, concrete walk/ramp, a concrete patio (Lot 25.01) or wood deck (Lot 25.04) at the rear of the dwelling unit.

12. The proposed Lots 25.02 and 25.03 shall be of rectangular configuration with 26.00 feet of frontage along the Jefferson Avenue right-of-way and a depth of 100.00 feet. Each lot shall have an area of 2,600 square feet (0.060 acres) and shall contain the two interior units of the proposed attached townhouse building. Each of the proposed dwelling units shall be 2-

stories in height and shall have a gross floor area of 2,514 square feet. Proposed amenities shall include a shared covered porch at the front entry to the respective dwelling units, a one-car garage, paved driveway, a wood deck or a concrete patio at the rear of the dwelling unit.

13. None of the units would have a basement.
14. Applicant's proposed development required the following relief:
 - (i) Preliminary and final site plan approval;
 - (ii) A variance under and pursuant to N.J.S.A. 40:55D-70(d) to permit the four (4) unit townhouse project in the Class B District since as configured the proposed attached units constitute a non-conforming principal structure;
 - (iii) A *de minimis* exception from the RSIS standards to permit a total of eight (8) parking spaces where nine (9) parking spaces are required under RSIS standards;
 - (iv) Preliminary and final subdivision approval
15. With respect to the major subdivision proposed, the following are required:

Proposed Lot 25.01:

- (i) A variance to permit a lot area of 3,650 sf where 7,500 sf is required;
- (ii) A variance to permit a lot width of 36.5 feet where 75 feet is required;
- (iii) A variance to permit a side yard of 10 feet/0 feet where 10 feet is required;
- (iv) A variance to permit building coverage of 40.0% where 20% maximum is permitted;
- (v) A variance to permit a minimum garage size of 260 sf where 500 sf is required; and

Proposed Lot 25.02:

- (i) A variance to permit a lot area of 2,600 sf where 7,500 sf is required;
- (ii) A variance to permit a lot width of 26 feet where 75 feet is required;
- (iii) A variance to permit a side yard of 0 feet/0 feet where 10 feet is required;
- (iv) A variance to permit building coverage of 56.5 % where 20% maximum is permitted;
- (v) A variance to permit a minimum garage size of 260 sf where 500 sf is required; and

Proposed Lot 25.03:

- (i) A variance to permit a lot area of 2,600 sf where 7,500 sf is required;
- (ii) A variance to permit a lot width of 26 feet where 75 feet is required;
- (iii) A variance to permit a side yard of 0 feet/0 feet where 10 feet is required;
- (iv) A variance to permit building coverage of 56.5 % where 20% maximum is permitted;

- (v) A variance to permit a minimum garage size of 260 sf where 500 sf is required; and

Proposed Lot 25.04:

- (i) A variance to permit a lot area of 3,650 sf where 7,500 sf is required;
- (ii) A variance to permit a lot width of 36 feet where 75 feet is required;
- (iii) A variance to permit a side yard of 10 feet/0 feet where 10 feet is required;
- (iv) A variance to permit building coverage of 40.0% where 20% maximum is permitted;
- (v) A variance to permit a minimum garage size of 26.0 sf where 500 sf is required; and

16. Subsequent to its filing the Applicant amended its Application and submitted plans to show, *inter alia*:

- i. each of the four units would be 2-bedroom units
- ii. The configuration of units 2 and 3 were modified to eliminate steps, and that all units would have barrier-free access;
- iii. The interior width of the garages would be increased to 13 feet;
- iv. The height of each units would be reduced to conform to the zone's height restrictions and thus have eliminated the need for height variance relief for each unit;

17. The proposed units are to be deed-restricted for veterans and senior housing in accordance with the terms of the AARPASA as well as the regulations set forth by the New Jersey Housing and Mortgage Finance Agency ("NJHMFA"). Moreover, each unit shall have a maximum occupancy of a family of four (4) persons in accordance with the rules of the NJHMFA currently in force as of the time of this Resolution.

18. The Board specifically notes the provisions of the AARPASA stating:

A. The conveyance by the Township to Habitat hereunder shall be in consideration of Habitat agreeing to construct two (2) low and two (2) moderate income housing units on the Premises [Property] to partially satisfy the Township's low and moderate income housing obligations consistent with the Supreme Court COAH Case as provided herein, and/or the monetary consideration of One (\$1.00) Dollar.

B. The AARPASA is contingent upon the Township receiving an order from the Superior Court of New Jersey in the Washington Township Case approving the housing units to be constructed as eligible affordable units which are to be credited to the Township's obligation to provide low and moderate income housing pursuant to the Fair Housing Act and the principles and dictates set forth by the New Jersey Supreme Court in Supreme Court COAH Case.

C. An Order was entered by the Superior Court of New Jersey on March 3, 2016, in the Washington Township Case providing that the four (4) housing units to be constructed on the Premises [Property] and marketed by Habitat under the provisions of the AARPASA shall constitute four (4) units of credit toward the Township's affordable housing obligations as determined by the Superior Court of New Jersey, and the Township may rely on the credits established by said Order in conveying the Premises [Property] to Habitat for the purpose of having Habitat construct and sell the housing units in accordance with the terms of the AARPASA.

19. Moreover, the Board specifically notes the provisions of the AARPASA stating: *It shall be the requirement of Habitat that, to the extent legally permissible, two units constructed and sold by Habitat shall be for persons 55 years old and older (hereinafter referred to as "Senior Housing") ... and two units with a preference for Veterans ... all of which shall contain two (2) bedrooms.*

20. The Board understands and accepts that a "Veteran" is to be defined as: "any citizen and resident of this State honorably discharged or released under honorable circumstances from active service in time of war in any branch of the Armed Forces of the United States.

21. Pursuant to the regulations of the NJHMFA, the minimum duration of the aforementioned deed restriction is 45 years.

22. The proposed owner/occupant(s) of each unit will be selected in accordance with the Applicant's family selection policy as testified to, and each shall be eligible to receive continued monitoring, support and counseling in accordance with that same policy.

23. Residents Anthony and Francesco Morin, and Christopher Gariasco appeared in opposition to the Application. Though they did not object to the proposed use per se, they objected to and questioned its size, specifically the number of units proposed. Mr. and Mrs.

Morin further voiced concerns as to the visual impact of the proposed development upon and from their property. Neither Mr. Gariasco nor Mr. and Mrs. Morin presented professional testimony in support of their respective objections.

CONCLUSIONS OF LAW

1. The subdivided lots and four residential units as proposed do not comply with the requirements for residential uses Class B District. The request to permit the construction of the addition requires the granting of a “d(1)” variance pursuant to N.J.S.A. 40:55D-70(d)(1).

2. The subdivided lots and four residential units do not comply with the bulk requirements for lots within the Class B District as aforesaid and therefore require variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

3. The Board finds that the Applicant has satisfied the applicable balancing tests for the granting of each of the variances and relief requested.

4. N.J.S.A. 40:55D-70(d) provides that a zoning board of adjustment may “[i]n particular cases and for special reasons, grant a variance to allow departure from regulations pursuant to article 8 f this act to permit : (1) a use or principal structure in a district restricted against such use or principal structure[.]”

5. Through the testimony and exhibits presented, the Applicant has established that the application:(a) relates to a specific piece of property, namely the Applicant's premises; (b) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, namely the promotion of the public health, safety, morals and general welfare and the preservation of neighborhood character and conservation of neighborhood values; (c) that the variance can be granted without substantial detriment to the public good; (d) that the benefits of the deviation would substantially outweigh any detriment

and that the variance will not substantially impair the intent and purpose of the zone plan and ordinance. It is well-established that a use that is “inherently beneficial” satisfies the special reasons criterion. Smart SMR v. Fairlawn Bd. of Adj., 152 N.J. 309 (1998)(citations omitted); Sica v. Bd. of Adjustment of Tp. Of Wall, 127 N.J. 152 (1992). In the present case, the Board finds that providing affordable housing generally, and specifically with regard to veterans and seniors is inherently beneficial and thus the special reasons criterion for the granting of “d” variance relief is satisfied. Moreover, the proposed development will mitigate the present impervious coverage, will provide a storm water management plan where one previously did not exist, and will provide for generous plantings for buffering.

6. The Board finds that there is no substantially negative impact to the surrounding area or master plan were relief to be granted. The proposed residential housing units are more consistent with the residential make-up of the area than was the previous VFW Hall. The Applicant proposes sufficient plantings for screening from adjacent properties. The Board takes specific note of the deed restrictions, Applicant’s selection procedures as well as the limited sizes of the units all of which are intended to limit the density and use of each unit, all to the effect of limiting the impact of the proposed use.

7. The Board similarly finds that the requested bulk variances and waivers provide a better zoning alternative than strict compliance with the applicable zone regulations and that the same may be granted with any substantial detriment to the neighboring area or master plan. Again, the Board makes note of the landscape buffering that is to be provided which is intended to be an effective screen to the adjacent properties.

8. The Board further notes and determines that the record supports that the granting of the requested bulk variances and any applicable waiver can and should here be subsumed

within the granting of the overall use variance under N.J.S.A. 40:55D-70(d). Price v. Hiemji, LLC, 214 N.J. 263 (2013).

9. The Zoning Board having been satisfied with the proofs presented and based upon the foregoing findings of fact hereby concludes that:

10. This Resolution is not intended to be all encompassing, but merely a summary of the testimony, exhibits and other evidence presented and relied upon by the Board during the hearings on this Application, all of which is incorporated herein by reference.

11. The granting of the variance for the Application for subdivision and site plan approval, and use and bulk variance relief, as amended, appropriate and approved.

12. The Board hereby finds that the granting of the each of the specific use and bulk variances far outweighs any detriments. Indeed the Board finds that there would be no substantial detriment to the surrounding neighborhood nor to the Township's Master plan were the variances to be granted.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Washington on this 20th day of September, 2016, that based upon the findings of fact previously set forth, the Zoning Board of Adjustment determines that the Application is **GRANTED**, subject to the Applicant paying all the necessary fees and permit costs to the Township of Washington, complying with all applicable Federal State, County and local rules, regulations and laws, and subject to the following additional conditions;

- a. The proposed development must be constructed strictly in accordance with the plans as amended, testimony and representations presented and made to the Board.
- b. Each unit shall be deed-restricted to eligible persons 55 years old and older and two units with a preference for Veterans.
- c. Each unit shall have a maximum family occupancy of four persons.
- d. Each unit shall be deed-restricted to ensure that the coloring of the units together - remain uniform.
- e. The Board recommends that the Applicant explore the practicability of installing a sprinkler system for the four units.

- f. Pursuant to the recommendation of the Township's volunteer Ambulance Corp., the units will bear house numbering that is clearly labelled for ease of identification.
- g. The front and rear yards shall not be enclosed by any fencing.
- h. The Board recommends that the VFW identification stone of the existing VFW building be offered to and donated to the VFW.
- i. The Board recommends that the stained glass windows of the existing VFW building be offered to and donated to the Township of Washington, Bergen County
- j. For ease and continuity and consistency of the maintenance for and across the four units, the Board recommends, but does not require, that the Applicant explore the practicability of establishing a homeowners' association for the four units.
- k. The Applicant shall, in consultation with and the Board's engineer, work to reasonably maximize landscape screening to the rear of the overall Property.
- l. The Zoning Board of Adjustment Engineer shall prepare a letter providing for the amounts of performance guaranties and engineering and legal escrows required for the Project, and all work referenced therein shall be deemed part of the Preliminary and Final Major Subdivision/Site Plan approved hereunder.
- m. The Applicant shall be required to execute and deliver to the Township a Builder's Agreement detailing all of the terms of public improvements to be performed, the amounts of guaranties to be furnished and all other items as agreed upon and stipulated therein, said agreement to be prepared by the Township Attorney whose fees therefore shall be paid by the Applicant.
- n. Applicant shall be further required to make application to the Planning Board of the Township of Washington for the issuance of a major soil removal permit in accordance with the Chapter 242 of the Township of Washington Code.
- o. Applicant shall revise its plans in accordance with to applicable comments set forth in the Planning Board engineer's report dated July 18, 2016.
- p. Any subsequently revised and submitted plans shall be subject to the continued review comment and approval of the Planning Board's Engineer.

Moved By:

Seconded By:

On September 20, 2016 according to the below indicated votes:

<u>Name</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Mr. Asfar	[✓]	[]	[]	[]
Mr. Miras	[✓]	[]	[]	[]
Ms. Burke	[✓]	[]	[]	[]
<i>Abstain</i> Mr. Cumming	[]	[]	[✓]	[]
Mr. Mouravieff	[✓]	[]	[]	[]
<i>Abstain</i> Ms. Ozment	[✓]	[]	[✓]	[]
Mr. DeSena	[✓]	[]	[]	[]
Mr. Toro	[✓]	[]	[]	[]
<i>no longer</i> Mr. Smith	[]	[]	[]	[✓]

APPROVED [X]

DISAPPROVED []

Attest:

Approved: Pat McDermott
Pat McDermott, Acting Secretary

[Signature]
Thomas Asfar, Chair

I hereby certify the foregoing to be a true and accurate copy of a resolution adopted by the Board of Adjustment of the Township of Washington at a meeting held on 13th day of September, 2016