



YOUR GOALS. OUR MISSION.

WTBZ-R0060

June 12, 2020

Barbara Coleman, Secretary
Township of Washington Zoning Board of Adjustment
350 Hudson Avenue
Township of Washington, NJ 07676

**Re: Second Planning Review
Preliminary/Final Site Plan, and Use Variance
CSH Pascack LLC
Block 2202 Lot 1; 620 Pascack Road
Class AA (Residential) Zone**

Dear Ms. Coleman:

We have reviewed the following materials as part of the above-referenced application:

- *Township of Washington Zoning Board of Adjustment Application form and supplemental attachments;*
- *Site Plan, prepared by Daniel T. Sehnal, PE of the firm Dynamic Engineering, consisting of eighteen (18) sheets, dated January 10, 2020, last revised March 20, 2020;*
- *Architectural drawings entitled CSH Pascack Road Township of Washington, prepared by George T. Wilson, AIA, NJ RA, of the firm Meyer Architects, Inc., consisting of four sheets, A1.01, A1.02, A1.03 and A2.01, dated January 9, 2020, last revised March 20, 2020;*
- *ALTA/NSPS Land Title Survey, prepared by Craig Black PE, LS, of the firm Dynamic Survey LLC, consisting of one (1) sheet, dated August 23, 2019, last revised March 18, 2020;*
- *Landscape Plan prepared by James J. Langenstein, NJ LLA, Longstone Gardens, consisting of one sheet, dated January 10, 2020, last revised March 11, 2020;*
- *Traffic Engineering Assessment prepared by David Shropshire PE, PP, of the firm Shropshire Associates LLC, letter report consisting of six pages, with figures and appendices, dated January 15, 2020.*

We have reviewed the above-referenced application and documents for use and bulk variances, preliminary and final major site plan approvals, and we offer the following comments: (Our revised comments are shown as bold italics *thus.*)

A. Property Description

The subject parcel is an improved tract of land comprised of Block 2202, Lot 1 located on the west side of Pascack Road, with a frontage of approximately 267 feet and area of 5.015 acres. The property is developed with an indoor tennis court facility and associated parking areas. The rear of the lot is unimproved and restricted by a conservation easement. The existing use is not permitted in the zone; it was allowed as a use variance in 1975.

The surrounding land uses consist of a commercial use to the north along Pascack Road and residential uses to the north in the rear. A commercial use is located on the south side of the property on Pascack Road and residential uses in the rear. The Musquapsink Brook is located along the south property line (to the rear) of the parcel. Multifamily residential uses are located to the east across Pascack Road of the tract.



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The subject parcel is located in the Class AA (Residential) zone district. Surrounding lands on the north, west and south of the subject site are in the AA (Residential Zone. The lands across Pascack Road are designated as Class PRTD Planned Residential Townhouse District) zone district.

B. Project Description

The applicant is requesting use variance relief and preliminary and final major site plan approval to construct a three-story assisted living facility/memory care facility consisting of 85 units (100 beds) and associated parking, landscaping, lighting and stormwater management improvements. The applicant will demolish the existing indoor tennis facility. Use d(1) variance relief is required as the assisted living/memory care facility is not permitted use in the Class AA zone. In addition, d(6) height variance relief is also required as the proposed building will be **39.5** feet and 3 stories which will exceed the maximum allowed height of 30 feet and 2.5 stories permitted by the Ordinance. The applicant proposes parking area of 51 parking spaces on the side and rea of the proposed building.

C. Planning and Zoning

1. Relationship to the Master Plan

The Township of Washington Planning Board adopted the last reexamination of the Master Plan on July 31, 2019, with the prior reexamination report adopted in 2006. The Land Use Plan in the 2006 Township of Washington Master Plan Reexamination Report identifies the subject site in the Residential Class AA zone. This designation is consistent with the current zoning. In the 2019 Master Plan Reexamination report, there were no revisions or recommendations to the master plan that had any relationship to the subject site.

2. Use

The project site is in the Class AA (Residential) Zone, which allows single family detached residences with a minimum lot area of one-half acre. The applicant is requesting use variance relief to construct a three-story assisted living facility/memory care facility consisting of 85 units (100 beds). The proposed development is not a permitted use in the Class AA zone district. The only uses permitted in the Class AA zone are single-family dwellings, independent living adult housing, and townhouses per the Planned Single-Family/Townhouse District requirements. Therefore, the application requires a d(1) use variance.

To be entitled to a d(1) use variance, the applicant must demonstrate that the application satisfies both the positive and the negative criteria of the Municipal Land Use Law.

a. Positive Criteria:

In presenting the positive criteria for the grant of a d(1) variance the applicant should provide testimony affirming the following:



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- (1) That the site is particularly suited to the use. The recent New Jersey Supreme Court case, ‘Himeji’, clarified the tests for evaluating suitability. First, the applicant must establish the facts that distinguish the subject property from surrounding sites and second, that the need for the proposed use is best served at the location of the subject property.
- (2) There are special reasons that allow a departure from the zoning regulations in this case. The applicant must demonstrate that the variance promotes one or more of those purposes stipulated in the Municipal Land Use Law to establish special reasons and that those purposes will be advanced by the proposed development.

Inherently Beneficial Use

In the addendum to its application, the applicant contends that the proposed assisted living facility is an inherently beneficial use and cites relevant cases. The definition of an inherently beneficial use in the MLUL is a use “which is universally is considered of value to the community because it fundamentally serves the public good and promotes the general welfare.” (N.J.S.A. 40:55D-3) Assisted living/memory care facilities are not specifically listed in the NJ Municipal Land Use Law (MLUL) as an inherently beneficial use. However, there is New Jersey case law where similar uses were deemed by the court as inherently beneficial.

If the Board deems the proposed use as inherently beneficial, it will presumptively satisfy the positive criteria for the grant of a use variance. To assist the Board in making this determination, the applicant should provide a copy of a certificate of need from the State of NJ.

If the Board determines that the use is inherently beneficial, the applicant’s expert should provide testimony to address the following criteria established by the NJ Supreme Court in *Sica v. Board of Adjustment of the Township of Wall* (127 N.J. 152 (1992); 603 A.2d 30):

- Determine the magnitude of the public interest at stake.
- Identify the detrimental effects that may ensue from the grant of the variance.
- Identify any mitigating measures to address any detrimental effects.
- Weigh the positive and negative criteria to determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

b. Negative Criteria:

There are two prongs to the negative criteria that the applicant must satisfy:

- (1) That the variance can be granted without substantial detriment to the public good. This prong requires an evaluation of the impact of the variance on surrounding properties and a determination as to whether the proposed use would cause damage to the character of the neighborhood.



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(2) That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance.

Enhanced Burden of Proof for the d(1) Variance: Assuming that the Board determines that the proposed use is not inherently beneficial, the applicant must address the enhanced burden of proof set forth in *Medici v. BPR Co.*, 107 N.J. 1, 5 (1987), in which the court made clear that municipalities should make zoning decisions by ordinance rather than variance. Specifically, the board must reconcile the proposed use variance with the expressed intent of the zone plan and Township Master Plan.

To be entitled to variance relief for the **d(6) height variance**, the applicant must demonstrate that the application satisfies both the positive and the negative criteria of the Municipal Land Use Law. The key focus of the proofs for a height variance relate to the increased intensity or floor area of the building due to the added height, especially for a use not permitted in the zone. The Board should be satisfied that the tract can accommodate the increase in height, resulting in more floor area and number of units, over the maximum allowed by ordinance.

3. Bulk Requirements

An analysis of the bulk and yard requirements of the AA zone district is as follows:

Standard	Code Reference	Required	Existing	Proposed
Minimum Lot Area	§580-33	0.50 acre	218,435 sq. ft. (5.01 acres)	218, 435 sq. ft. (5.0 1 acres)
Minimum Lot Frontage	§580-33	100 ft.	276.31	276.31 ft.
Minimum Lot Depth	§580-83	95 ft.	>95 ft	>95 ft.
Maximum Building Coverage	§580-33	20%	31.6%	14.1%
Maximum Building Height	§580-34	2 ½ stories or 30 ft.	40/1-story	39.5 ft /3 story V
Minimum Front Yard	§580-35	50 ft.	58.8 ft.	55.7 ft.
Minimum Rear Yard	§580-36	25 feet plus one additional foot for each foot that a residence exceeds a height of 25 feet (39.5 ft.)	294 ft.	511.4 ft.
Minimum Side Yard	§580-37	15 feet each side yard plus 0.5 feet for each foot that a residence exceeds a height of 25 feet (22.25 ft.)	29.4 ft.	31.2 ft.
Minimum proximity of buildings to rear lot line	§580-38	10 ft.	45 ft.	83 ft.
Minimum Finished Living Floor Area	§580-82	1,500 sq. ft.	28, 874 sq. ft. footprint	28, 874 sq. ft. footprint

(V) = Variance required.



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Based on the above, the applicant requires bulk variance relief pursuant to NJSA 40:55D-70(c) for the number of stories. For consideration of “c” bulk variances, the applicant shall provide testimony to the Board that addresses the positive and negative criteria. The applicant’s testimony should focus on the following:

- a. Positive Criteria: The applicant shall provide testimony to the Board regarding the physical conditions of the property and how the strict application of the provisions of the ordinance would result in a hardship that is inconsistent with the purpose and intent of the ordinance. Alternatively, the applicant may testify that the required variance furthers the purposes of the Municipal Land Use Law and that the benefits of granting the variance will substantially outweigh any detriments.
- b. Negative Criteria: The applicant must demonstrate that the variance can be granted without substantial detriment to the public good, and that the granting of the variance will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

The testimony should address why the applicant cannot comply with the required bulk standards for the proposed units and the reasons that the deviation from the requirement advances a planning purpose.

D. Planning Comments

1. **Building Height.** Building height is defined by the ordinance (Township Code §580-2) as follows: *The vertical distance between the average ground elevation around the foundation of the building and the highest point of the building. For purposes hereof, "ground elevation" shall mean the elevation of the property in its undeveloped state or existing condition, if previously developed; or if a new elevation has been approved by the Planning Board or Zoning Board of Adjustment, in connection with an application for development such new elevation.* Prior to the public hearing, the applicant should submit the calculations and data used to determine the proposed building height so the Board professionals can confirm the proposed height was calculated in accordance with Township standards. *Continuing comment.*
2. **Parking.** The off-street parking requirements of an assisted living facility are governed by the NJ Residential Site Improvement Standards (RSIS). A minimum of 0.5 parking spaces per dwelling unit is required. Since 85 units are proposed, a minimum of 43 spaces are required. The applicant proposes 51 spaces which complies with the RSIS. *Continuing Comment.*
3. **Traffic.** The applicant has submitted a Traffic Engineering Assessment to evaluate the impact of the development on the levels of service of Pascack Road and nearby intersections. The traffic engineering consultant should provide testimony to the Board to review the results of their study and conclusions concerning potential impact. The traffic engineering consultant should also provide testimony as to the operation of the site



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- circulation of the proposed facility including delivery by tractor trailers. *Continuing Comment.*
4. Operations. The applicant should provide a statement of operations to provide the Board with pertinent information such as number of employees by shift, typical deliveries by size of truck and number per week, solid waste removal schedule, and the like. *Continuing Comment.*
 5. A Landscape Plan has been submitted to the Board for review. The applicant proposes new landscaping and shade trees along the site frontage, plantings along the building and a numerous deciduous and evergreen trees and shrubs in the rear. We defer to the Board engineer regarding the efficacy of the proposed plantings and consistency with the Township's ordinance. *Continuing Comment.*
 6. Environmental Resources. As noted, the property adjoins the Musquapsink Brook. The applicant shall take all necessary precautions to limit the disturbance to the streambank area delineated on the site plan. It is critical that the existing vegetation remain undisturbed along the streambank for stabilization. *Continuing Comment.*
 7. Affordable Housing. As required by law, 10 percent of the beds within the proposed facility will be available for Medicaid-eligible persons. The Medicaid-dedicated beds may be used to address the Township's low and moderate housing obligation. If the variance relief and site plan is approved, the applicant shall comply with all state requirements and Township ordinances to enable the Township to obtain credit towards its affordable housing obligation. *Continuing comment.*
 8. Signage. The applicant proposes a monument sign five (5) feet in height on Pascack Road. The specific sign area is 14.25 square feet *as shown on Sheet 15*. The applicant shall provide evidence the proposed sign complies with Township zoning and sign requirements or a variance will be required. *Continuing comment.*
 9. The zoning chart should be corrected as to the required minimum rear setback in the Residential AA District is 43.7 ft. *Addressed. This figure is now 39.5 feet as the calculation for the building height and 39.5 feet indicated in the chart.*
 10. Police, Fire and Emergency Services. The site plan should be submitted for review of the police, fire and emergency services agencies and comments provided prior to the public hearing. *Continuing Comment.*
 11. Outside agency approvals. The applicant shall provide evidence to the Board of Adjustment that all required approvals are obtained prior to any construction. These will include but not be limited to the Bergen County Planning Board, the Soil Conservation District, and sewer and water approvals. *Continuing Comment*



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12. The applicant should clarify the difference between units and beds and provide testimony to the Board on the unit mix and use and operations on each of the floors. *Continuing comment.*

We reserve the right to make additional comment upon the presentation of any additional information to the Board. If you have any questions or require any additional information, please advise.

Very truly yours,

T&M ASSOCIATES

STANLEY C. SLACHETKA, P.P., AICP
PLANNING CONSULTANT

SCS:MPT:lkc

c: Paul Azzolina, PE, Board Engineer (p.azzolina@afenginc.com)
Gary Giannantonio, Esq., Board Attorney (gary@hackensackattorneys.com)
Joe Setticase, Zoning Officer (jsetticase@twpofwashington.us)
Gail Price, Esq.
Daniel T. Sehnal, PE (dsehnal@dynamicec.com)