

TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY
ZONING BOARD OF ADJUSTMENT

RESOLUTION ZB-22- 11

WHEREAS, GOLDEN ORCHARD ASSOCIATES LP (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Washington for Amended Landscape Plan and Site Plan approval to grant the Applicant permission to remove twenty-nine (29) additional trees and for the planting of replacement trees and the contribution of additional trees, in accordance with the Amended Landscape Plan filed with this Application. By Resolution dated March 23, 2021, this Board granted the Applicant a Use Variance and Preliminary and Final Major Site Plan and Major Subdivision Approval for the development of the second phase of a two-phase project, known as “The Reserve at Arden Place” that consists of an age-restricted senior housing community with a total of thirty-seven (37) single family detached units. Thirty-one (31) of the units are or will be located wholly in the Borough of Hillsdale and six (6) of the units will be located either partially or fully in the Township of Washington. Each unit located in the age-restricted senior housing community is a single-family dwelling and separately owned under the condominium form of ownership. The Applicant also received subdivision and site plan approval for a separate lot wholly situated in the Township of Washington for the construction of one (1) non-age restricted, conventional single-family dwelling. The dwelling will have street frontage and driveway access along Pascack Road and will not be part of the condominium development. The approved landscape plan expressly permitted the removal of ninety-three (93) trees on the Applicant’s property and the replanting of 202 “replacement” trees to provide a dense landscaped buffer for the Northgate Condominium property directly to the south. The Applicant is the owner of the property formerly designated as Lot Nos. 3 and 7 (currently Lots 3.01 and 3.02) in Block 2101, on the Tax Assessment

Map of the Township of Washington. The Applicant is represented by Siobhan Bailey, Esq. from the Law Firm of Huntington Bailey, L.L.P.; and

WHEREAS, the Township of Washington Zoning Board of Adjustment has carefully considered the testimony of the Applicant’s Principal, Stuart Weinberger, the Applicant’s Professional Landscape Architect, Scott Koenig, of Lapatka Associates, Inc, the Applicant’s Arborist, A. Wayne Cahilly, of Cahilly’s Horticultural Services, LLC, the Applicant’s Professional Planner, Michael Kauker, P.P., AICP, the Applicant’s Professional Engineer, Alex J. Zepponi, P.E., of ENTEC, Engineering & Technical Resources, Inc., the Township Planning Consultant, Stanley C. Slachetka, P.P., AICP, the Zoning Board’s Engineer, Paul Azzolina, PE, CME and evidence presented by the Applicants and their professionals and Board discussion and comments during the general public hearing held on June 21, 2022 via electronic means and in compliance with the Open Public Meetings Act and related Guidelines for Remote Public Meetings issued by the Division of Local Government Services , prior to which time the Applicant presented proof of notice and publication as required by law, and;

WHEREAS, the Township of Washington Zoning Board of Adjustment has reviewed the following:

EXHIBITS INTRODUCED

EXHIBIT	DATE INTRODUCED
A-1: Amended Landscape Plan (Revised through 4/8/22)	6/21/2022
A-2: Excerpt of Amended Landscape Plan (Rev. through 4/8/22)	6/21/2022
A-3: Tree Location Plan (12/10/21)	
A-4: Landscape Plan (Revised through 1/5/21)	
A-5: Evaluation of Tree Removal in No-Disturbance Area and Remedial Screening Measures as Proposed (5/3/22)	
A-6: Photos of Site and Marked Trees	
A-&: Letter from Northgate Condominium Association(5/19/22)	

WHEREAS, the Township of Washington Zoning Board of Adjustment has made the following findings of fact and conclusions of law:

1. The property is designated as Lots 3.01 and 3.02 in Block 2101 and is located in the “Class AA” residential zone;

2. At the public hearing held on June 21, 2022 the Applicant’s Attorney, Siobhan Bailey, Esq. gave a recap of the project and prior Site Plan with Landscape Plan that was Approved by the Board in 2021. Ms. Bailey advised the Board that the Applicant is now requesting an amendment to the previously approved Landscape Plan to permit the removal of an additional twenty-nine (29) trees bringing the total to 122 trees. She advised the Board that twenty-nine (29) trees were either dead, diseased, or irreparably damaged due to weather or other environmental conditions and did not have room to grow to maturity. She advised that the removal of these additional trees would ensure the success of the new plantings in this area and fulfill the terms of the Settlement Agreement with the Northgate Condominium Association (“Northgate”) for the parties to cooperate and complete and fill in existing foliage canopy along the common property line. She advised the Board that on November 17, 2021, the Applicant and Northgate agreed to the removal of the twenty-nine (29) trees in the buffer area and marked each additional tree to be removed. Ms. Bailey advised that in December 2021 the Applicant caused the marked trees to be removed which was consistent with the Applicant’s agreement with Northgate but not consistent with the landscape plans previously approved by the Board. The Applicant and their Attorney were almost immediately contacted by representatives of Washington Township and advised that the Applicant was in violation of the Township’s Zoning Board’s approval by removing the additional trees and a Stop Work Order was issued. The Applicant immediately ceased all construction activities in Washington Township and has extensively consulted with the Township Engineer and Northgate and now appeals before this Board for amended site plan approval of an

amended landscape plan. Ms. Bailey advised the Board that fifty-eight (58) trees are required to be planted for a 2:1 replacement required by the Township's Ordinance. She advised that fifteen (15) of those will be planted on the site and the Applicant will make a financial contribution to the Township's tree fund since there is not enough room to plant fifty-eight (58) trees.

3. The Applicant's Principal, Stuart Weinberger, was sworn in and testified that the Applicant has been working well with Northgate since the Settlement agreement. The two parties were in agreement that the new plantings would do better with the trees removed and additional evergreens could be installed in place of the unhealthy trees. However, he testified that he should have also discussed same with the Township of Washington and received approval from this Board before the trees were removed. He apologized to the Board for this mistake, but he was most concerned with obtaining the approval of Northgate since their unit owners are the most affected by the changes to the landscape plan.

4. The Applicant's Professional Landscape Architect, Scott Koenig, of Lapatka Associates, Inc, was sworn in and accepted by the Board as an expert. Mr. Koenig testified that he agreed with the reported conditions of the trees to be removed and that the goal is to create a favorable environment for the replacement trees to grow in. He testified that the trees that were removed had no leaves or branches below and did not provide any buffer at the lower levels. The additional evergreen trees will provide a dense buffer along the entire length of the tree. The placement along the south facing edge is appropriate and well thought out for supplemental planting. The Zoning Board's Engineer, Paul Azzolina, PE, CME advised the Board that he agrees with the testimony and the accuracy of what had occurred after the trees were removed.

5. The Applicant's Arborist, A. Wayne Cahilly, of Cahilly's Horticultural Services, LLC was sworn in and accepted by the Board as an expert witness. He testified that he reviewed pictures of

the trees that were removed and has visited the site and walked through the remaining trees. He testified that some trees had fungi which spreads fast and reduces the structural strength of the trees rapidly. He also testified that some of the Beech Trees had Beech Tree Leaf disease. He testified that when developing a site it is not recommended to preserve trees which have disease issues. He likes the mix of replacement trees and recommends that the Oak and Hickory replacement trees should be planted in the Spring and not the fall. He testified that in his opinion the amended landscape plan will work and do what its intended to do.

6. The Applicant's Professional Planner, Michael Kauker, P.P., AICP, was sworn in and accepted by the Board as an expert witness. He testified that he visited the site and notes that the trees that were removed were in poor condition and the new trees will provide a substantial buffer. He testified that the amended landscape plan is consistent with the Applicant's Settlement Agreement with Northgate and the Board's prior resolution. He further testified that the amended landscape plan does not impair the zone plan or create a detriment to the public good. He testified that it mitigates any potential negative effects on the surrounding area and will provide a more substantial buffer that what was originally proposed. He also testified that the amended landscape plans do not change any relief previously granted by the Board and from a planning standpoint he is confident the Board can grant approval. The Township Planning Consultant, Stanley C. Slachetka, P.P., AICP, advised the Board that he agreed with Mr. Kauker's testimony and had no questions or anything to add to the current testimony.

7. During the public portion there was some concern about flooding and drainage and future maintenance of the property. Mr. Weinberger testified that there has not been any issue with drainage for over a year since the buildings were constructed and since the last three (3) to four (4) years he has been working on the property. He testified that the location will be improved because the shrubs, trees and new sod will more than compensate for the dead trees being removed. The Applicant's

Professional Engineer, Alex J. Zepponi, P.E., of ENTEC, Engineering & Technical Resources, Inc. was sworn in and accepted by the Board as an expert. He testified that several computer models were run to simulate various storm levels and in every case the water conditions were improved. He testified that he believes that the stormwater management system goes above and beyond what is required. He further testified that there have not been any problems so far and there will not be any adverse impact on the neighboring properties. He testified that there will not be any more new roofs or roads built in the complex which would be flood generators so the site is already “built out” in that respect. Ms. Bailey advised that the maintenance obligations are set forth in the formation documents of the Golden Orchard Development. She also advised that the developer will have responsibility for an unspecified period of time until all of the units are sold at which time the obligations will fall to the Association. She advised that in general the association is responsible to maintain the landscaping and suggests anyone can review the documents and possibly consult their own attorney for a more specific interpretation. She also mentioned there is an extensive Settlement Agreement with Northgate which also addresses the Developer’s obligations.

WHEREAS, members of the public were invited to ask questions of the Applicant after testimony was given, and all questions offered by members of the public were answered to the satisfaction of the Zoning Board of Adjustment;

WHEREAS, the Zoning Board of Adjustment has determined that the relief requested by the Applicants can be granted without substantial detriment to the public good and without substantially impairing the intent or purpose of the Zoning Ordinance of the Township of Washington. Moreover, the Board finds that the plan represents a better planning alternative with the least impact on the property as a whole, and is not out of character, and is not likely to be a substantial detrimental impact upon any other properties in the neighborhood, and would blend into the surrounding properties;

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Washington on this 19th day of July, 2022 that based upon the findings of fact, testimony presented and documents submitted for review as previously set forth, the application of GOLDEN ORCHARD ASSOCIATES LP is hereby granted for Amended Site Plan and Amended Landscape Plan approval to allow the removal of twenty-nine (29) additional trees and for the planting of replacement trees and a financial contribution to the Township's Tree fund in accordance with the Amended Landscape Plan filed with this Application.

BE IT FURTHER RESOLVED that the Applicant shall comply with all of the following conditions of approval;

1. The Applicant will continue to advise the Township of the progress of the tree removal and tree plantings and same is subject to review and approval by the Board's Engineer.

BE IT FURTHER RESOLVED that the Applicant shall comply with all of the stipulations made during the hearing on this Application as set forth herein and on the record before the Board.

BE IT FURTHER RESOLVED the Applicant's failure to comply with conditions set forth in this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of either a building permit and/or Certificate of Occupancy of the premises, subject to reasonable notice and the opportunity to cure.


BE IT FURTHER RESOLVED that pursuant to the Code of the Township of Washington, the variances granted will expire within one (1) year from the date of this Resolution if construction is not commenced, however, this Board reserves the right to grant extensions of time from this Resolution if circumstances warrant the same;

BE IT FURTHER RESOLVED, that the Secretary of the Zoning Board of Adjustment of the Township of Washington is hereby directed to mail a copy of this Resolution to applicant; to furnish a copy to the building department; to file a copy of this Resolution with the Township of Washington Clerk; and to cause a notice of this determination of the Zoning Board of Adjustment to be published in the official newspaper of the Township of Washington within ten (10) days of the date hereof and thereafter published according to law.

BY THE BOARD

Dated: July 19, 2022

BY:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above a solid horizontal line.

Said Toro, Chairman

Certified to be a true copy of the Resolution adopted by the Zoning Board of Adjustments of the Township of Washington at its meeting on Tuesday, July 19, 2022.

Grace Kalish

 Grace Kalish, Secretary

BOARD	MOTION	SECOND	AYES	NAYES	ABSTAIN	ABSENT	RECUSE
Callandrillo			X				
Capasso			X				
Hanna			X				
LaGratta		X	X				
Mahoney	X		X				
Roberto			X				
Toro			X				